

House Engrossed Senate Bill
attorney general; legislature; legal challenges

State of Arizona
Senate
Fifty-sixth Legislature
First Regular Session
2023

SENATE BILL 1021

AN ACT

AMENDING SECTIONS 12-1841 AND 41-192, ARIZONA REVISED STATUTES; RELATING
TO COURTS AND CIVIL PROCEEDINGS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 12-1841, Arizona Revised Statutes, is amended to
3 read:

4 12-1841. Parties; notice of claim of unconstitutionality

5 A. When declaratory relief is sought, all persons shall be made
6 parties who have or claim any interest ~~which~~ THAT would be affected by the
7 declaration, and no declaration shall prejudice the rights of persons not
8 parties to the proceeding. In any proceeding that involves the validity
9 of a municipal ordinance or franchise, ~~such~~ THE municipality shall be made
10 a party and shall be entitled to be heard. In any proceeding in which a
11 state statute, ordinance, franchise or rule is alleged to be
12 unconstitutional, the attorney general, ~~and~~ the speaker of the house of
13 representatives and the president of the senate shall be served with a
14 copy of the pleading, motion or document containing the allegation at the
15 same time the other parties in the action are served and shall be entitled
16 to be heard.

17 B. If a pleading, motion or document containing the allegation is
18 served on the attorney general, ~~and~~ the speaker of the house of
19 representatives and the president of the senate pursuant to subsection A
20 OF THIS SECTION, a notice of claim of unconstitutionality shall be
21 attached to the pleading, motion or document as the cover page and shall
22 state the following information:

23 1. The name, address and telephone number of the attorney for the
24 party alleging that a state law is unconstitutional or the name, address
25 and telephone number of the party if the party is not represented by an
26 attorney.

27 2. The case name, court name, caption and case number of the
28 proceeding.

29 3. A brief statement of the basis for the claim of
30 unconstitutionality.

31 4. A brief description of the proceeding, with copies of any court
32 orders in the proceeding if the claim of unconstitutionality is asserted
33 in a pleading, motion or document other than the pleading, motion or
34 document that initiated the proceeding.

35 5. The date, time, location, judge and subject of the next hearing
36 in the proceeding, if any.

37 C. IF A COURT ORDER REQUESTS THE PARTIES IN A PROCEEDING TO ADDRESS
38 THE CONSTITUTIONALITY OF A STATE STATUTE AND NO PARTY HAS ALLEGED IN THE
39 PROCEEDING THAT THE STATE STATUTE IS UNCONSTITUTIONAL, THE CLERK OF THE
40 COURT SHALL PROVIDE PROMPT NOTICE OF THE COURT'S ORDER TO THE SPEAKER OF
41 THE HOUSE OF REPRESENTATIVES AND THE PRESIDENT OF THE SENATE.

1 ~~C.~~ D. If the attorney general or the speaker of the house of
2 representatives and the president of the senate are not served in a timely
3 manner with notice pursuant to ~~subsection A~~ THIS SECTION, on motion by the
4 attorney general, the speaker of the house of representatives or the
5 president of the senate the court shall vacate any finding of
6 unconstitutionality and shall give the attorney general, the speaker of
7 the house of representatives or the president of the senate a reasonable
8 opportunity to prepare and be heard.

9 ~~D.~~ E. This section shall DOES not ~~be construed to~~ compel the
10 attorney general, the speaker of the house of representatives or the
11 president of the senate to intervene as a party in any proceeding or to
12 ~~permit~~ ALLOW them to be named as defendants in a proceeding. The attorney
13 general, the speaker of the house of representatives or the president of
14 the senate, in the party's discretion, may intervene as a party, may file
15 briefs in the matter or may choose not to participate in a proceeding that
16 is subject to the notice requirements of this section.

17 Sec. 2. Section 41-192, Arizona Revised Statutes, is amended to
18 read:

19 41-192. Powers and duties of attorney general; restrictions
20 on state agencies as to legal counsel; exceptions;
21 compromise and settlement monies

22 A. The attorney general shall have charge of and direct the
23 department of law and shall serve as chief legal officer of the state.
24 The attorney general shall:

25 1. Be the legal advisor of the departments of this state and render
26 such legal services as the departments require.

27 2. Establish administrative and operational policies and procedures
28 within ~~his~~ THE department.

29 3. Approve long-range plans for developing departmental programs
30 ~~therein~~, and coordinate the legal services required by other departments
31 of this state or other state agencies.

32 4. Represent school districts and governing boards of school
33 districts in any lawsuit involving a conflict of interest with other
34 county offices.

35 5. Represent political subdivisions, school districts and
36 municipalities in suits to enforce state or federal statutes pertaining to
37 antitrust, restraint of trade or price-fixing activities or conspiracies,
38 if the attorney general notifies in writing the political subdivisions,
39 school districts and municipalities of the attorney general's intention to
40 bring any such action on their behalf. At any time within thirty days
41 after the notification, a political subdivision, school district or
42 municipality, by formal resolution of its governing body, may withdraw the
43 authority of the attorney general to bring the intended action on its
44 behalf.

1 6. DEFEND THE CONSTITUTIONALITY OF ANY LAW PASSED BY THE
2 LEGISLATURE AND SIGNED BY THE GOVERNOR IN ANY LEGAL PROCEEDING. THE
3 ATTORNEY GENERAL SHALL BE RELIEVED FROM THIS DUTY BY PROVIDING NOTICE TO
4 THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE PRESIDENT OF THE
5 SENATE STATING THAT THE ATTORNEY GENERAL DOES NOT INTEND TO DEFEND THE LAW
6 AT LEAST TEN DAYS BEFORE FILING ANY SUBSTANTIVE OR DISPOSITIVE PLEADING
7 REGARDING THE CONSTITUTIONALITY OF THE CHALLENGED LAW.

8 7. Organize the civil rights division within the department of law
9 and administer ~~such~~ THE division pursuant to the powers and duties
10 provided in chapter 9 of this title.

11 8. Compile, publish and distribute to all state agencies,
12 departments, boards, commissions and councils, and to other persons and
13 government entities on request, at least every ten years, the Arizona
14 agency handbook that sets forth and explains the major state laws that
15 govern state agencies, including information on the laws relating to
16 bribery, conflicts of interest, contracting with the government,
17 disclosure of public information, discrimination, nepotism, financial
18 disclosure, gifts and extra compensation, incompatible employment,
19 political activity by employees, public access and misuse of public
20 resources for personal gain. A supplement to the handbook reflecting
21 revisions to the information contained in the handbook shall be compiled
22 and distributed by the attorney general as deemed necessary.

23 B. Except as otherwise provided by law, the attorney general may:

24 1. Organize the department into such bureaus, subdivisions or units
25 as he deems most efficient and economical, and consolidate or abolish
26 them.

27 2. Adopt rules for the orderly conduct of the business of the
28 department.

29 3. Subject to chapter 4, article 4 of this title, employ and assign
30 assistant attorneys general and other employees necessary to perform the
31 functions of the department.

32 4. Compromise or settle any action or claim by or against this
33 state or any department, board or agency of this state. If the compromise
34 or settlement involves a particular department, board or agency of this
35 state, the compromise or settlement shall be first approved by the
36 department, board or agency. If ~~no~~ A department or agency is NOT named or
37 otherwise materially involved, the approval of the governor shall be first
38 obtained.

39 5. Charge reasonable fees for distributing official publications,
40 including attorney general legal opinions and the Arizona agency handbook.
41 The fees received shall be transmitted to the state treasurer for deposit
42 in the state general fund.

1 C. The powers and duties of a bureau, subdivision or unit shall be
2 limited to those assigned by law to the department.

3 D. Notwithstanding any law to the contrary, except as provided in
4 subsections E and F of this section, no state agency other than the
5 attorney general shall employ legal counsel or make an expenditure or
6 incur an indebtedness for legal services, but the following are exempt
7 from this section:

- 8 1. The director of water resources.
- 9 2. The residential utility consumer office.
- 10 3. The industrial commission.
- 11 4. The Arizona board of regents.
- 12 5. The auditor general.
- 13 6. The corporation commissioners and the corporation commission
14 other than the securities division.
- 15 7. The office of the governor.
- 16 8. The constitutional defense council.
- 17 9. The office of the state treasurer.
- 18 10. The Arizona commerce authority.
- 19 11. The water infrastructure finance authority of Arizona.

20 E. If the attorney general determines that he is disqualified from
21 providing judicial or quasi-judicial legal representation or legal
22 services on behalf of any state agency in relation to any matter, the
23 attorney general shall give written notification to the state agency
24 affected. If the agency has received written notification from the
25 attorney general that the attorney general is disqualified from providing
26 judicial or quasi-judicial legal representation or legal services in
27 relation to any particular matter, the state agency is authorized to make
28 expenditures and incur indebtedness to employ attorneys to provide the
29 representation or services.

30 F. If the attorney general and the director of the department of
31 agriculture cannot agree on the final disposition of a pesticide complaint
32 under section 3-368, if the attorney general and the director determine
33 that a conflict of interest exists as to any matter or if the attorney
34 general and the director determine that the attorney general does not have
35 the expertise or attorneys available to handle a matter, the director is
36 authorized to make expenditures and incur indebtedness to employ attorneys
37 to provide representation or services to the department with regard to
38 that matter.

39 ~~6.~~ G. In any action brought by the attorney general pursuant to
40 state or federal statutes pertaining to antitrust, restraint of trade, or
41 price-fixing activities or conspiracies for the recovery of damages by
42 this state or any of its political subdivisions, school districts or
43 municipalities, in addition to the attorney general's other powers and
44 authority, the attorney general on behalf of this state may enter into

1 contracts relating to the investigation and prosecution of such action
2 with any other party plaintiff who has brought a similar action for the
3 recovery of damages and with whom the attorney general finds it
4 advantageous to act jointly or to share common expenses or to cooperate in
5 any manner relative to such action. In any such action, notwithstanding
6 any ~~other laws~~ LAW to the contrary, the attorney general may undertake,
7 among other things, to render legal services as special counsel or to
8 obtain the legal services of special counsel from any department or agency
9 of the United States, of this state or any other state or any department
10 or agency thereof or any county, city, public corporation or public
11 district in this state or in any other state that has brought or intends
12 to bring a similar action for the recovery of damages or its duly
13 authorized legal representatives in such action.

14 ~~G.~~ H. Any department or agency of this state authorized by law to
15 maintain a legal division or incur expenses for legal services from funds
16 derived from sources other than the general revenue of the state, or from
17 any special or trust fund, shall pay from such source of revenue or
18 special or trust fund into the general fund of ~~the~~ THIS state, to the
19 extent such funds are available and on a reimbursable basis for warrants
20 drawn, the amount actually expended by the department of law within
21 legislative appropriations for such legal division or legal services.

22 ~~H.~~ I. Appropriations made pursuant to subsection ~~G.~~ H of this
23 section ~~shall~~ ARE not ~~be~~ subject to lapsing provisions otherwise provided
24 by law. Services for departments or agencies to which this subsection and
25 subsection F of this section ~~are applicable~~ APPLY shall be performed by
26 special or regular assistants to the attorney general.

27 ~~I.~~ J. Notwithstanding section 35-148, monies received by the
28 attorney general from charges to state agencies and political subdivisions
29 for legal services relating to interagency service agreements shall be
30 deposited, pursuant to sections 35-146 and 35-147, in an attorney general
31 agency services fund. Monies in the fund are subject to legislative
32 appropriation and are exempt from the provisions of section 35-190
33 relating to lapsing of appropriations.

34 ~~J.~~ K. Unless otherwise provided by law, monies received for and
35 belonging to the state and resulting from compromises and settlements
36 entered into pursuant to subsection B of this section, excluding
37 restitution and reimbursement to state agencies for costs or attorney
38 fees, shall be deposited into the state treasury and credited to the state
39 general fund pursuant to section 35-142. Monies received for and
40 belonging to the state and resulting from a compromise or settlement are
41 not considered custodial, private or quasi-private monies unless
42 specifically provided by law. On or before January 15, April 15, July 15
43 and October 15, the attorney general shall file with the governor, with
44 copies to the director of the department of administration, the president

1 of the senate, the speaker of the house of representatives, the secretary
2 of state and the staff director of the joint legislative budget committee,
3 a full and complete account of the deposits into the state treasury made
4 pursuant to this subsection in the previous calendar quarter. For the
5 purposes of this subsection, "restitution" means monies intended to
6 compensate a specific, identifiable person, including this state, for
7 economic loss.