

REFERENCE TITLE: **commerce; 2024-2025.**

State of Arizona
Senate
Fifty-sixth Legislature
Second Regular Session
2024

SB 1738

Introduced by
Senator Kavanagh (with permission of Committee on Rules)

AN ACT

AMENDING SECTIONS 6-135 AND 20-466, ARIZONA REVISED STATUTES; AMENDING TITLE 20, CHAPTER 2, ARTICLE 6, ARIZONA REVISED STATUTES, BY ADDING SECTION 20-466.05; REPEALING LAWS 2023, CHAPTER 136, SECTION 2; AMENDING LAWS 2023, CHAPTER 136, SECTION 4; RELATING TO COMMERCE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 6-135, Arizona Revised Statutes, is amended to
3 read:

4 6-135. Department revolving fund; use of fund

5 A. ~~There is established a~~ THE department revolving fund IS
6 ESTABLISHED to be administered by the deputy director under the conditions
7 and for the purposes provided by this section. Monies in the fund are
8 exempt from the provisions of section 35-190, relating to lapsing of
9 appropriations.

10 B. Any investigative costs, attorney fees or civil penalties
11 recovered for the state by the attorney general or the deputy director as
12 a result of actions brought pursuant to this title, whether by final
13 judgment, settlement or otherwise, shall be deposited in the department
14 revolving fund. If the unencumbered portion of the fund exceeds ~~\$200,000~~
15 \$700,000 at the end of the fiscal year, all unencumbered monies in excess
16 of ~~\$200,000~~ \$700,000 shall be deposited in the department receivership
17 revolving fund, pursuant to section 6-135.01.

18 C. The monies in the fund shall be used by the deputy director and
19 the attorney general for investigative proceedings or for purposes of
20 instituting and prosecuting civil actions pursuant to this title.

21 D. On or before the fifteenth day of February, May, August and
22 November ~~of~~ each year, the deputy director shall file with the governor,
23 with copies to the director of the department of administration, the
24 president of the senate and the speaker of the house of representatives, a
25 full and complete account of the receipts and disbursements from the fund
26 in the previous calendar quarter.

27 Sec. 2. Section 20-466, Arizona Revised Statutes, is amended to
28 read:

29 20-466. Fraud unit; investigators; peace officer status;
30 powers; information sharing; assessment

31 A. The fraud unit is established in the department of insurance and
32 financial institutions. The director of the department of insurance and
33 financial institutions shall appoint an individual to operate the fraud
34 unit in conjunction with operating the automobile theft authority
35 established by section 41-3451.

36 B. The fraud unit shall work in conjunction with the department of
37 public safety.

38 C. The director may investigate any act or practice of fraud
39 prohibited by section 20-466.01 and any other act or practice of fraud
40 against an insurer or entity licensed under this title. The director
41 shall administer the fraud unit.

42 D. The director may employ investigators for the fraud unit. A
43 fraud unit investigator has and shall exercise the law enforcement powers
44 of a peace officer of this state but only while acting in the course and
45 scope of employment for the department of insurance and financial

1 institutions. The director shall adopt guidelines for the conduct of
2 investigations that are substantially similar to the investigative policy
3 and procedural guidelines of the department of public safety for peace
4 officers. Fraud unit investigators shall not preempt the authority and
5 jurisdiction of other law enforcement agencies of this state or its
6 political subdivisions. Fraud unit investigators:

7 1. Shall have at least the qualifications prescribed by the Arizona
8 peace officer standards and training board pursuant to section 41-1822.

9 2. Are not eligible to participate in the public safety personnel
10 retirement system established by title 38, chapter 5, article 4 due solely
11 to employment as fraud unit investigators.

12 E. The director may request the submission of papers, documents,
13 reports or other evidence relating to an investigation under this section.
14 The director may issue subpoenas and take other actions pursuant to
15 section 20-160. The materials are privileged and confidential until the
16 director completes the investigation. Any documents, materials or other
17 information that is provided to the director pursuant to this section is
18 not subject to discovery or subpoena until opened for public inspection by
19 the director or, after notice and a hearing, a court determines that the
20 director would not be unduly burdened by compliance with the subpoena.
21 The director shall keep the identity of an informant confidential,
22 including any information that might identify the informant, unless the
23 request for information is made by a law enforcement agency, the attorney
24 general or a county attorney for purposes of a criminal investigation or
25 prosecution. The director may use the documents, materials or other
26 information in the furtherance of any regulatory or legal action brought
27 as a part of the director's official duties.

28 F. If the documents, materials or other information the director
29 seeks to obtain by request is located outside this state, the person
30 requested to provide the documents, materials or other information shall
31 arrange for the fraud unit or a representative, including an official of
32 the state in which the documents, materials or other information is
33 located, to examine the documents, materials or other information where it
34 is located. The director may respond to similar requests from other
35 states.

36 G. An insurer that believes a fraudulent claim has been or is being
37 made shall send to the director, on a form prescribed by the director,
38 information relative to the claim including the identity of parties
39 claiming loss or damage as a result of an accident and any other
40 information the fraud unit may require. The director shall review the
41 report and determine if further investigation is necessary. If the
42 director determines that further investigation is necessary, the director
43 may conduct an independent investigation to determine if fraud, deceit or
44 intentional misrepresentation in the submission of the claim exists. If
45 the director is satisfied that fraud, deceit or intentional

1 misrepresentation of any kind has been committed in the submission of a
2 claim, the director may report the violations of the law to the reporting
3 insurer, to the appropriate licensing agency as defined in section
4 20-466.04 and to the appropriate county attorney or the attorney general
5 for prosecution.

6 H. The director may:

7 1. Share nonpublic documents, materials or other information with
8 other state, federal and international regulatory agencies, with the
9 national association of insurance commissioners and its affiliates and
10 subsidiaries and with state, federal and international law enforcement
11 authorities if the recipient agrees and warrants that it has the authority
12 to maintain the confidentiality and privileged status of the documents,
13 materials or other information.

14 2. Receive documents, materials and other information from the
15 national association of insurance commissioners and its affiliates and
16 subsidiaries and from regulatory and law enforcement officials of other
17 jurisdictions and shall maintain as confidential or privileged any
18 document, material or other information received with notice or the
19 understanding that it is confidential or privileged under the laws of the
20 jurisdiction that is the source of the document, material or other
21 information.

22 3. Enter into agreements that govern the sharing and use of
23 documents, materials and other information and that are consistent with
24 this section.

25 I. A disclosure to or by the director pursuant to this section or
26 as a result of sharing information pursuant to subsection H of this
27 section is not a waiver of any applicable privilege or claim of
28 confidentiality in the documents, materials or other information disclosed
29 or shared.

30 J. The director shall annually assess each insurer as defined in
31 section 20-441, subsection B authorized to transact business in this state
32 up to \$1,050 for the administration and operation of the fraud unit and
33 the prosecution of fraud pursuant to this section. Monies collected shall
34 be deposited, pursuant to sections 35-146 and 35-147, ~~in the state general~~
35 ~~fund for appropriation to the fraud unit. All monies appropriated to the~~
36 ~~department for the fraud unit shall be included as a separate line item in~~
37 ~~the general appropriations act. The department shall use all appropriated~~
38 ~~monies exclusively to operate the fraud unit~~ IN THE FRAUD UNIT ASSESSMENT
39 FUND ESTABLISHED BY SECTION 20-466.05.

40 K. A person, or an officer, employee or agent of the person acting
41 within the scope of employment or agency of that officer, employee or
42 agent, who in good faith files a report or provides other information to
43 the fraud unit pursuant to this section is not subject to civil or
44 criminal liability for reporting that information to the fraud unit.

1 Sec. 3. Title 20, chapter 2, article 6, Arizona Revised Statutes,
2 is amended by adding section 20-466.05, to read:

3 20-466.05. Fraud unit assessment fund

4 A. THE FRAUD UNIT ASSESSMENT FUND IS ESTABLISHED CONSISTING OF
5 MONIES DEPOSITED PURSUANT TO SECTION 20-466, SUBSECTION J. MONIES IN THE
6 FUND ARE CONTINUOUSLY APPROPRIATED. THE DEPARTMENT SHALL ADMINISTER THE
7 FUND FOR ADMINISTERING AND OPERATING THE FRAUD UNIT ESTABLISHED BY SECTION
8 20-466.

9 B. MONIES APPROPRIATED TO THE DEPARTMENT FROM THE FRAUD UNIT
10 ASSESSMENT FUND SHALL BE INCLUDED AS A SEPARATE LINE ITEM IN THE GENERAL
11 APPROPRIATIONS ACT.

12 Sec. 4. Repeal

13 Laws 2023, chapter 136, section 2 is repealed.

14 Sec. 5. Laws 2023, chapter 136, section 4 is amended to read:

15 Sec. 4. Microbusiness loan program; fund; eligible entities;
16 report; delayed repeal; transfer of monies;
17 definitions

18 A. The microbusiness loan fund is established consisting of
19 legislative appropriations. The office of economic opportunity shall
20 administer the fund. Monies in the fund are continuously appropriated and
21 are exempt from the provisions of section 35-190, Arizona Revised
22 Statutes, relating to lapsing of appropriations. ~~In fiscal year~~
23 ~~2023-2024~~, The office of economic opportunity shall use the monies in the
24 fund for the microbusiness loan program.

25 B. The office of economic opportunity shall establish the
26 microbusiness loan program to provide funding to eligible entities that
27 provide loans to microbusinesses in this state.

28 C. The office of economic opportunity shall publicly list and
29 solicit program applications for the participation and funding of eligible
30 entities.

31 D. ~~In fiscal year 2023-2024~~ To receive funding from the program, an
32 eligible entity must satisfy the following criteria:

33 1. Have expertise in microbusiness loan applications and evaluating
34 microbusiness creditworthiness.

35 2. Establish an administrative system to monitor the microbusiness
36 loans provided pursuant to this section.

37 3. Evaluate whether a proposed microbusiness loan will generate
38 economic development and jobs within this state.

39 4. Refer all microbusiness loan recipients to a local organization
40 or nonprofit organization that provides professional financial education.

41 E. A microbusiness loan provided by an eligible entity pursuant to
42 this section may be used for the following:

43 1. Operation of the microbusiness, including creation and retention
44 of jobs.

45 2. Working capital.

1 3. Acquisition or improvement of real property.

2 4. Acquisition of machinery and equipment.

3 5. Refinancing of debt obligations.

4 F. The office of economic opportunity shall market and advertise
5 the program to microbusinesses that are unable to access traditional
6 funding sources and offer information on other similar programs. The
7 office of economic opportunity may use up to one percent of the monies
8 deposited in the fund for the purposes of this subsection.

9 G. For each loan disbursed by an eligible entity using monies from
10 the program, the following requirements apply:

11 1. The principal amount of an individual loan may not exceed
12 \$50,000.

13 2. Program monies may not be used for more than twenty-five percent
14 of the principal amount of the loan, but the office of economic
15 opportunity may set a higher cap by rule.

16 3. Any principal and interest amounts repaid on program monies
17 shall be used only for additional microbusiness loans pursuant to this
18 section.

19 H. An eligible entity that participates in the program shall
20 certify with the office of economic opportunity that a loan to a
21 microbusiness complies with this section.

22 I. An eligible entity that participates in the program may charge
23 application, commitment and loan guarantee fees as established by the
24 eligible entity's management. Fees charged by eligible entities pursuant
25 to this subsection may not exceed the following:

26 1. \$500 for loans with a principal amount less than \$25,000.

27 2. Two percent of the total loan principal for loans with a
28 principal amount of \$25,000 or more.

29 J. On or before February 1, 2024, the office of economic
30 opportunity shall submit a report on the number of microfinance lenders in
31 this state, the availability of microbusiness credit in this state and any
32 recommendations for increasing the availability of credit to
33 microbusinesses in this state to the governor, the president of the
34 senate, the speaker of the house of representatives, the joint legislative
35 budget committee and the governor's office of strategic planning and
36 budgeting and shall provide a copy of the report to the secretary of
37 state.

38 K. On or before July 31, 2024, the office of economic opportunity
39 shall submit a report to the governor, the president of the senate, the
40 speaker of the house of representatives and the joint legislative budget
41 committee and provide a copy of the report to the secretary of state that
42 contains all of the following:

43 1. A list of the eligible entities that have received funding from
44 the program.

1 2. The number of microbusiness loans made by each eligible entity
2 using monies from the program and the type of business each loan recipient
3 operates.

4 3. The average principal amount of microbusiness loans made by each
5 eligible entity using monies from the program.

6 4. The county and zip code of each eligible entity.

7 5. The county and zip code of the recipients of each loan made to
8 an eligible entity with monies from the program.

9 6. The current outstanding principal of microbusiness loans made by
10 eligible entities using program monies.

11 7. The total amount of loan losses for microbusiness loans made by
12 eligible entities using program monies.

13 8. The total amount of principal repaid to eligible entities for
14 microbusiness loans made pursuant to this section.

15 9. The total amount of interest earned and fees charged by eligible
16 entities for microbusiness loans made pursuant to this section.

17 L. The office of economic opportunity may not allocate more than
18 \$2,000,000 of the monies deposited into the fund to an eligible entity.
19 The office of economic opportunity shall allocate program funds so that
20 there is a participating eligible entity from at least two different
21 counties.

22 M. FROM AND AFTER JUNE 30, 2025, THIS SECTION IS REPEALED, AND ALL
23 UNEXPENDED AND UNENCUMBERED MONIES IN THE MICROBUSINESS LOAN FUND
24 ESTABLISHED BY THIS SECTION ARE TRANSFERRED TO THE STATE GENERAL FUND.

25 ~~M.~~ N. For the purposes of this section:

26 1. "Community development financial institution" means an entity
27 that is currently certified pursuant to 12 Code of Federal Regulations
28 section 1805.201.

29 2. "Eligible entity" means a community development financial
30 institution or a nonprofit lender in this state with at least two years of
31 lending experience.

32 3. "Microbusiness" means a business that is located in this state,
33 that is independently owned and operated and that employs five or fewer
34 people.

35 Sec. 6. Effective date

36 A. Section 20-466, Arizona Revised Statutes, as amended by this
37 act, is effective from and after June 30, 2025.

38 B. Section 20-466.05, Arizona Revised Statutes, as added by this
39 act, is effective from and after June 30, 2025.