

State of Arizona  
Senate  
Fiftieth Legislature  
First Regular Session  
2011

# SENATE BILL 1212

## AN ACT

AMENDING SECTIONS 8-344 AND 12-352, ARIZONA REVISED STATUTES; AMENDING TITLE 12, CHAPTER 12, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 12-2108; AMENDING SECTIONS 13-805, 25-510, 32-2188, 32-2193.38, 32-2193.39, 36-3411 AND 38-809, ARIZONA REVISED STATUTES; AMENDING SECTION 38-849, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2010, CHAPTER 118, SECTION 10; REPEALING SECTION 38-849, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2010, CHAPTER 200, SECTION 45; AMENDING SECTIONS 38-897, 38-912 AND 44-1201, ARIZONA REVISED STATUTES; RELATING TO CRIMINAL AND CIVIL ACTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 8-344, Arizona Revised Statutes, is amended to  
3 read:

4 8-344. Restitution payments

5 A. If a juvenile is adjudicated delinquent, the court, after  
6 considering the nature of the offense and the age, physical and mental  
7 condition and earning capacity of the juvenile, shall order the juvenile to  
8 make full or partial restitution to the victim of the offense for which the  
9 juvenile was adjudicated delinquent or to the estate of the victim if the  
10 victim has died. The juvenile shall make restitution payments to the clerk  
11 of the court for disbursement to the victim or estate of the victim.

12 B. The court shall notify the victim or estate of the victim of the  
13 dispositional hearing. The court may consider a verified statement from the  
14 victim or estate of the victim concerning damages for lost wages, reasonable  
15 damages for injury to or loss of property and actual expenses of medical  
16 treatment for personal injury, excluding pain and suffering.

17 C. In ordering restitution pursuant to subsection A of this section,  
18 the court may order one or both of the juvenile's custodial parents to make  
19 restitution to the victim of the offense for which the juvenile was  
20 adjudicated delinquent or to the estate of the victim if the victim has died.  
21 The court shall determine the amount of restitution ordered pursuant to this  
22 subsection, except that the amount shall not exceed the liability limit  
23 established pursuant to section 12-661. The court may order a parent or  
24 juvenile who is ordered to pay restitution to satisfy the order in a lump sum  
25 or installment payments to the clerk of the court for disbursement to the  
26 victim or estate of the victim. If the court orders the juvenile's parents  
27 to make restitution pursuant to this subsection, the court shall order the  
28 juvenile to make either full or partial restitution, regardless of the  
29 juvenile's insufficient earning capacity. The court shall not consider the  
30 ability of the juvenile's parents to pay restitution before making a  
31 restitution order.

32 D. The juvenile court shall retain jurisdiction of the case after the  
33 juvenile attains eighteen years of age for the purpose of modifying the  
34 manner in which court ordered payments are to be made. After a juvenile  
35 attains eighteen years of age, the juvenile court shall enter the following:

36 1. A juvenile restitution order in favor of the state for the unpaid  
37 balance, if any, of any costs, fees, surcharges or monetary assessments  
38 imposed.

39 2. A juvenile restitution order in favor of each person entitled to  
40 restitution for the unpaid balance of any restitution ordered pursuant to  
41 this section.

42 E. The clerk of the court shall send a copy of the juvenile  
43 restitution order to each person who is entitled to restitution.

44 F. A juvenile restitution order may be recorded and enforced as any  
45 civil judgment, except that a juvenile restitution order does not require

1 renewal pursuant to section 12-1611 or 12-1612. A juvenile restitution order  
2 does not expire until paid in full. ENFORCEMENT OF A JUVENILE RESTITUTION  
3 ORDER BY ANY PERSON WHO IS ENTITLED TO RESTITUTION OR BY THE STATE INCLUDES  
4 THE COLLECTION OF INTEREST, WHICH ACCRUES AT A RATE OF TEN PER CENT PER  
5 ANNUM.

6 G. A juvenile restitution order is a criminal penalty for the purposes  
7 of a federal bankruptcy involving the juvenile.

8 Sec. 2. Section 12-352, Arizona Revised Statutes, is amended to read:

9 12-352. Medical malpractice judgments; payment of interest;  
10 definition

11 A. Notwithstanding any law to the contrary, in a contested action  
12 arising out of a medical malpractice claim the court shall award the payment  
13 of interest to the prevailing party at a rate that is equal to ~~three~~ ONE  
14 percentage ~~points~~ POINT above the federal postjudgment interest rate in  
15 effect on the date judgment is entered. Interest shall only accrue from and  
16 after the date judgment is entered until the judgment is paid. If the  
17 judgment is reversed or otherwise set aside, no interest shall be paid. The  
18 rate for calculating interest that accrues from and after the date judgment  
19 is entered shall be adjusted on June 30 and December 31 of each year to equal  
20 ~~three~~ ONE percentage ~~points~~ POINT above the federal postjudgment interest  
21 rate in effect on the date of adjustment until the judgment is paid. The  
22 interest rate specified for purposes of this section shall not exceed nine  
23 per cent. Interest shall accrue at each adjusted rate only until the next  
24 adjustment. The adjusted interest rate shall not be applied to any preceding  
25 six-month period.

26 B. For the purposes of this section, "federal postjudgment INTEREST  
27 rate" means the interest rate established for the federal court system  
28 pursuant to 28 United States Code section 1961, as amended.

29 Sec. 3. Title 12, chapter 12, article 1, Arizona Revised Statutes, is  
30 amended by adding section 12-2108, to read:

31 12-2108. Preservation of right to appeal judgment without  
32 execution

33 A. IF A PLAINTIFF IN ANY CIVIL ACTION OBTAINS A JUDGMENT UNDER ANY  
34 LEGAL THEORY, THE AMOUNT OF THE BOND THAT IS NECESSARY TO STAY EXECUTION  
35 DURING THE COURSE OF ALL APPEALS OR DISCRETIONARY REVIEWS OF THAT JUDGMENT BY  
36 ANY APPELLATE COURT SHALL BE SET AS THE LESSER OF THE FOLLOWING:

- 37 1. THE TOTAL AMOUNT OF DAMAGES AWARDED EXCLUDING PUNITIVE DAMAGES.
- 38 2. FIFTY PER CENT OF THE APPELLANT'S NET WORTH.
- 39 3. TWENTY-FIVE MILLION DOLLARS.

40 B. NOTWITHSTANDING SUBSECTION A, IF AN APPELLEE PROVES BY CLEAR AND  
41 CONVINCING EVIDENCE THAT AN APPELLANT IS INTENTIONALLY DISSIPATING ASSETS  
42 OUTSIDE THE ORDINARY COURSE OF BUSINESS TO AVOID PAYMENT OF A JUDGMENT, THE  
43 COURT MAY REQUIRE THE APPELLANT TO POST A BOND IN AN AMOUNT UP TO THE FULL  
44 AMOUNT OF THE JUDGMENT.

1 C. NOTWITHSTANDING SUBSECTION A, IF AN APPELLANT PROVES BY CLEAR AND  
2 CONVINCING EVIDENCE THAT THE APPELLANT IS LIKELY TO SUFFER SUBSTANTIAL  
3 ECONOMIC HARM IF REQUIRED TO POST BOND IN AN AMOUNT REQUIRED UNDER SUBSECTION  
4 A, THE TRIAL COURT MAY LOWER THE BOND AMOUNT TO AN AMOUNT THAT WILL NOT CAUSE  
5 THE APPELLANT SUBSTANTIAL ECONOMIC HARM.

6 Sec. 4. Section 13-805, Arizona Revised Statutes, is amended to read:  
7 13-805. Jurisdiction

8 A. The trial court shall retain jurisdiction of the case for purposes  
9 of modifying the manner in which court-ordered payments are made until paid  
10 in full or until the defendant's sentence expires. At the time the defendant  
11 completes the defendant's period of probation or the defendant's sentence,  
12 the court shall enter both:

13 1. A criminal restitution order in favor of the state for the unpaid  
14 balance, if any, of any fines, costs, incarceration costs, fees, surcharges  
15 or assessments imposed.

16 2. A criminal restitution order in favor of each person entitled to  
17 restitution for the unpaid balance of any restitution ordered.

18 B. The clerk of the court shall notify each person who is entitled to  
19 restitution of the criminal restitution order.

20 C. A criminal restitution order may be recorded and enforced as any  
21 civil judgment, except that a criminal restitution order does not require  
22 renewal pursuant to section 12-1611 or 12-1612. Enforcement of a criminal  
23 restitution order by any person who is entitled to restitution or by the  
24 state includes the collection of interest that accrues ~~pursuant to section~~  
25 ~~44-1201 in the same manner as any civil judgment~~ AT A RATE OF TEN PER CENT  
26 PER ANNUM. A criminal restitution order does not expire until paid in full.

27 D. A criminal restitution order is a criminal penalty for the purposes  
28 of a federal bankruptcy involving the defendant.

29 Sec. 5. Section 25-510, Arizona Revised Statutes, is amended to read:  
30 25-510. Receiving and disbursing support and maintenance  
31 monies; arrearages; interest

32 A. The support payment clearinghouse established pursuant to section  
33 46-441 shall receive and disburse all monies, including fees and costs,  
34 applicable to support and maintenance unless the court has ordered that  
35 support or maintenance be paid directly to the party entitled to receive the  
36 support or maintenance. Within two business days the clerk of the superior  
37 court shall transmit to the support payment clearinghouse any maintenance and  
38 support payments received by the clerk. Monies received by the support  
39 payment clearinghouse in cases not enforced by the state pursuant to title  
40 IV-D of the social security act shall be distributed in the following  
41 priority:

42 1. Current child support or current court ordered payments for the  
43 support of a family when combined with the child support obligation.

44 2. Current spousal maintenance.

1           3. The current monthly fee prescribed in subsection D of this section  
2 for handling support or spousal maintenance payments.

3           4. Past due support reduced to judgment and then to associated  
4 interest.

5           5. Past due spousal maintenance reduced to judgment and then to  
6 associated interest.

7           6. Past due support not reduced to judgment and then to associated  
8 interest.

9           7. Past due spousal maintenance not reduced to judgment and then to  
10 associated interest.

11           8. Past due amounts of the fee prescribed in subsection D of this  
12 section for handling support or spousal maintenance payments.

13           B. In any proceeding under this chapter regarding a duty of support,  
14 the records of payments maintained by the clerk or the support payment  
15 clearinghouse are prima facie evidence of all payments made and disbursed to  
16 the person or agency to whom the support payment is to be made and are  
17 rebuttable only by a specific evidentiary showing to the contrary.

18           C. At no cost to the clerk of the superior court, the department shall  
19 provide electronic access to all records of payments maintained by the  
20 support payment clearinghouse, and the clerk shall use this information to  
21 provide payment histories to all litigants, attorneys and interested persons  
22 and the court. For all non-title IV-D support cases, the clerk shall load  
23 new orders, modify order amounts, respond to payment inquiries, research  
24 payment related issues, release payments pursuant to orders of the court and  
25 update demographic and new employer information. The clerk shall forward  
26 orders of assignment to employers for non-title IV-D support orders. Within  
27 five business days the clerk shall provide to the department any new address,  
28 order of assignment or employment information the clerk receives regarding  
29 any support order. The information shall be provided as prescribed by the  
30 department of economic security in consultation with the administrative  
31 office of the courts.

32           D. The support payment clearinghouse shall receive a monthly fee for  
33 handling support and maintenance payments. The director, by rule, may  
34 establish this fee. The court shall order payment of the handling fee as  
35 part of the order for support or maintenance. The handling fee shall not be  
36 deducted from the support or maintenance portion of the payment.

37           E. In calculating support arrearages not reduced to a final written  
38 money judgment, interest accrues at the rate of ten per cent per annum  
39 ~~pursuant to section 44-1201~~, beginning at the end of the month following the  
40 month in which the support payment is due, and interest accrues only on the  
41 principal and not on interest. A support arrearage reduced to a final  
42 written money judgment accrues interest at the rate of ten per cent per annum  
43 ~~pursuant to section 44-1201~~ and accrues interest only on the principal and  
44 not on interest.

1 F. Past support reduced to a final written money judgment before  
2 September 26, 2008 and pursuant to section 25-320, subsection C or section  
3 25-809, subsection B accrues interest at the rate of ten per cent per annum  
4 ~~pursuant to section 44-1201~~ beginning on entry of the judgment by the court  
5 and accrues interest only on the principal and not on interest. Past support  
6 reduced to a final written money judgment beginning on September 26, 2008 and  
7 pursuant to section 25-320, subsection C or section 25-809, subsection B does  
8 not accrue interest for any time period.

9 G. Any direct payments not paid through the clearinghouse or any  
10 equitable credits of principal or interest permitted by law and allowed by  
11 the court after a hearing shall be applied to support arrearages as directed  
12 in the court order. The court shall make specific findings in support of any  
13 payments or credits allowed. If the court order does not expressly state the  
14 dates the payments or credits are to be applied, the payments or credits  
15 shall be applied on the date of the entry of the order that allows the  
16 payments or credits. In a title IV-D case, if a court order does not  
17 indicate on its face that the state was either represented at or had notice  
18 of the hearing or proceeding where the payments or credits were determined,  
19 the court order shall not reduce any sum owed to the department or its agent  
20 without written approval of the department or its agent.

21 H. Any credit against support arrearages, other than by court order,  
22 shall be made only by written affidavit of direct payment or waiver of  
23 support arrearages signed by the person entitled to receive the support or by  
24 that person and the person ordered to make the support payment. The  
25 affidavit of direct payment or waiver of support arrearages shall be filed  
26 directly with the clerk of the court, who shall enter the information into  
27 the statewide case registry. Any credits against support arrearages shall be  
28 applied as of the dates contained in the affidavit or the date of the  
29 affidavit if no other date is specified in the affidavit. In a title IV-D  
30 case, the affidavit of direct payment or waiver of support arrearages shall  
31 not reduce any sum owed to the department or its agent without written  
32 approval of the department or its agent.

33 I. An arrearage calculator may be developed by a government agency  
34 using an automated transfer of data from the clearinghouse and the child  
35 support registry. The arrearage figure produced by this calculator is  
36 presumed to be the correct amount of the arrearage.

37 Sec. 6. Section 32-2188, Arizona Revised Statutes, is amended to read:  
38 32-2188. Statute of limitations; service of summons;  
39 application for payment; insufficient monies;  
40 definition

41 A. An action for a judgment that subsequently results in an order for  
42 payment from the real estate recovery fund shall not be started later than  
43 five years from the accrual of the cause of action.

44 B. If an aggrieved person commences an action for a judgment that may  
45 result in an order for payment from the real estate recovery fund, and the

1 defendant licensee cannot be served process personally in this state, the  
2 summons may be served by the alternative methods of service provided for by  
3 the Arizona rules of civil procedure, including service by publication. A  
4 judgment that complies with the provisions of this section and that was  
5 obtained after service by publication only applies to and is enforceable  
6 against the real estate recovery fund. The department may intervene in and  
7 defend any such action.

8 C. An aggrieved person may apply to the department for payment from  
9 the real estate recovery fund after the aggrieved person obtains a judgment  
10 against a real estate or cemetery broker or salesperson based on the  
11 licensee's act, representation, transaction or conduct in violation of this  
12 chapter or the rules adopted pursuant to this chapter. The claimant must  
13 file the original application, including appendices, within two years after  
14 the termination of all proceedings, reviews and appeals connected with the  
15 judgment. The commissioner, in the commissioner's sole discretion, may waive  
16 the two-year application deadline if the commissioner determines that the  
17 waiver best serves the public interest. Delivery of the application must be  
18 by personal service or by certified mail, return receipt requested.

19 D. The application must be within the limitations prescribed in  
20 section 32-2186 for the amount unpaid on the judgment that represents the  
21 claimant's actual and direct loss on the transaction.

22 E. The department shall prescribe and supply an application form that  
23 includes detailed instructions with respect to documentary evidence,  
24 pleadings, court rulings, the products of discovery in the underlying  
25 litigation and notice requirements to the judgment debtor under section  
26 32-2188.01. The claimant must submit the claim on an application form  
27 supplied by the department. The application must include:

28 1. The claimant's name and address.

29 2. If the claimant is represented by an attorney, the attorney's name,  
30 business address and telephone number.

31 3. The judgment debtor's name and address or, if unknown, the names  
32 and addresses of persons who may know the judgment debtor's present location.

33 4. A detailed narrative statement of the facts explaining the  
34 allegations of the complaint on which the underlying judgment is based, with  
35 a copy of the contracts, receipts and other documents from the transaction,  
36 the last amended complaint, all existing recorded judgments, documentation of  
37 actual and direct out-of-pocket losses and any offsetting payment received  
38 and all collection efforts attempted.

39 5. The identification of the judgment, the amount of the claim and an  
40 explanation of its computation, including an itemized list of actual and  
41 compensatory damages awarded and claimed.

42 6. For the purpose of an application that is not based on a criminal  
43 restitution order, a statement by the claimant, signed under penalty of  
44 perjury, that the complaint on which the underlying judgment is based was  
45 prosecuted conscientiously and in good faith. For the purposes of this

1 paragraph, "conscientiously and in good faith" means that all of the  
2 following apply:

3 (a) No party that was potentially liable to the claimant in the  
4 underlying transaction was intentionally and without good cause omitted from  
5 the complaint.

6 (b) No party named in the complaint who otherwise reasonably appeared  
7 capable of responding in damages was intentionally and without good cause  
8 dismissed from the complaint.

9 (c) The claimant employed no other procedural means contrary to the  
10 diligent prosecution of the complaint in order to seek to qualify for the  
11 recovery fund.

12 7. For the purpose of an application that is based on a criminal  
13 restitution order, all of the following statements by the claimant, signed  
14 under penalty of perjury:

15 (a) The claimant has not intentionally and without good cause failed  
16 to pursue any person potentially liable to the claimant in the underlying  
17 transaction other than a defendant who is the subject of a criminal  
18 restitution order.

19 (b) The claimant has not intentionally and without good cause failed  
20 to pursue in a civil action for damages all persons potentially liable to the  
21 claimant in the underlying transaction who otherwise reasonably appeared  
22 capable of responding in damages other than a defendant who is the subject of  
23 a criminal restitution order.

24 (c) The claimant employed no other procedural means contrary to the  
25 diligent prosecution of the complaint in order to seek to qualify for the  
26 recovery fund.

27 8. The following statements, signed under penalty of perjury, and  
28 information from the claimant:

29 (a) The claimant is not a spouse of the judgment debtor or a personal  
30 representative of the spouse.

31 (b) The claimant has complied with all of the requirements of this  
32 article.

33 (c) The judgment underlying the claim meets the requirements of this  
34 article.

35 (d) The claimant has recorded a certified copy of the superior court  
36 judgment or transcript of judgment pursuant to sections 33-961 and 33-962 in  
37 the county where the judgment was obtained and in the ~~county~~ COUNTIES where  
38 all judgment debtors reside and has provided a copy of the recorded judgment  
39 to the commissioner.

40 (e) The claimant has caused the judgment debtor to make discovery  
41 under oath, pursuant to section 12-1631, concerning the debtor's property.

42 (f) The claimant has caused a writ of execution to be issued on the  
43 judgment and the officer executing the writ has made a return showing either:

1 (i) That no personal or real property of the judgment debtor liable to  
2 be levied on in satisfaction of the judgment could be found, sold or applied.

3 (ii) That the amount realized on the sale of the property, or as much  
4 of the property that was found, under the execution was insufficient to  
5 satisfy the judgment.

6 (g) The claimant has caused a writ of garnishment to be issued to each  
7 known employer of the judgment debtor ascertained by the claimant, that each  
8 garnishee-defendant has complied with the respective writ and any judgment or  
9 order resulting from the writ and that the amount realized from all judgments  
10 against the garnishee-defendants was insufficient to satisfy the balance due  
11 on the judgment.

12 (h) The claimant has deducted the following amounts from the actual or  
13 compensatory damages awarded by the court:

14 (i) Any amount recovered or anticipated from the judgment debtor or  
15 debtors.

16 (ii) Any amount recovered through collection efforts undertaken  
17 pursuant to subdivisions (d) through (g) of this paragraph and including an  
18 itemized valuation of the assets discovered and amounts applied.

19 (iii) Any amount recovered or anticipated from bonding, insurance or  
20 title companies, including recovery of punitive damages.

21 (iv) Any amount recovered or anticipated from in-court or out-of-court  
22 settlements.

23 (v) Any amount of tax benefits accrued or taken as deductions on  
24 federal, state or local income tax returns.

25 F. If the claim is based on a judgment against a salesperson or broker  
26 and the claimant has not obtained a judgment against the salesperson's or  
27 broker's employing broker, if any, or has not diligently pursued the assets  
28 of the employing broker, the department shall deny the claim for failure to  
29 diligently pursue the assets of all other persons liable to the claimant in  
30 the transaction unless the claimant demonstrates, by clear and convincing  
31 evidence, that either:

32 1. The salesperson or broker was not employed by a broker at the time  
33 of the transaction.

34 2. The salesperson's or broker's employing broker would not have been  
35 liable to the claimant because the salesperson or broker acted outside the  
36 scope of employment in the transaction.

37 G. The commissioner, at the commissioner's sole discretion, may waive  
38 compliance with one or more of the requirements enumerated in subsection E,  
39 paragraph 8 or subsection F of this section if the claim is based on an award  
40 pursuant to a criminal restitution order or if the commissioner is satisfied  
41 that the claimant has taken all reasonable steps to collect the amount of the  
42 judgment or the unsatisfied part of the judgment from all judgment debtors  
43 but has been unable to collect.

1 H. If the commissioner finds it is likely that the total remaining  
2 liability of the recovery fund is insufficient to pay in full the valid  
3 claims of all aggrieved persons who may have claims against any one licensee,  
4 the commissioner may petition the court to initiate a proration proceeding.  
5 The court shall grant the petition and order a hearing to distribute the  
6 total remaining liability of the fund among the applicants in the ratio that  
7 their respective claims bear to the aggregate of the valid claims or in such  
8 other manner as the court deems equitable. The commissioner or any party may  
9 file a proposed plan for equitable distribution of the available monies. The  
10 distribution of monies shall be among the persons entitled to share them,  
11 without regard to the order of priority in which their respective judgments  
12 may have been obtained or their respective applications may have been filed.  
13 The court may require all applicants and prospective applicants against one  
14 licensee to be joined in one action, to the end that the respective rights of  
15 all the applicants to the recovery fund may be equitably adjudicated and  
16 settled. The court shall not include in the claims for proration the claim  
17 of any person who has not, within ninety days after the court has entered the  
18 order for proration, filed a complaint with the court, served the licensee  
19 and provided written notice of the claim to the commissioner. The liability  
20 of the fund on any application affected by a proration proceeding is based on  
21 the limits in effect on the date when the last application for payment is  
22 filed. The court may refuse to consider or award prorated recovery to any  
23 person who fails to expeditiously prosecute a claim against the licensee or  
24 promptly file an application for payment and submit supporting documentation  
25 as required by this article.

26 I. If the commissioner pays from the real estate recovery fund any  
27 amount in settlement of an applicant's claim or toward satisfaction of a  
28 judgment against a licensed broker, designated broker for a corporation or  
29 salesperson, the license of the broker, designated broker for a corporation  
30 or salesperson shall be automatically terminated upon the issuance of an  
31 order authorizing payment from the real estate recovery fund. A broker,  
32 designated broker for a corporation or salesperson is not eligible to receive  
33 a new license until the licensee has repaid in full, plus interest at the  
34 rate provided by section 44-1201, ~~subsection A~~, the amount paid from the real  
35 estate recovery fund on the licensee's account and has provided evidence to  
36 the commissioner that the judgment has been fully satisfied.

37 J. If, at any time, the money deposited in the real estate recovery  
38 fund is insufficient to satisfy any duly authorized claim or portion of a  
39 claim, the commissioner shall, when sufficient money has been deposited in  
40 the real estate recovery fund, satisfy the unpaid claims or portions of  
41 claims, in the order that the claims or portions of claims were originally  
42 filed, plus accumulated interest at the rate of four per cent a year.

43 K. For the purposes of this section, "complaint" means the facts of  
44 the transaction on which the judgment is based.

1           Sec. 7. Section 32-2193.38, Arizona Revised Statutes, is amended to  
2 read:

3           32-2193.38. Final decision and order on claim; notice

4           A. The commissioner shall make a final written decision and order on a  
5 claim within ninety calendar days after the date the commissioner receives a  
6 completed application except in the following cases:

7           1. A proration hearing is pending under section 32-2193.34,  
8 subsection G.

9           2. An application is deficient or fails to comply substantially with  
10 the requirements of section 32-2193.34 or rules adopted pursuant to this  
11 article as determined pursuant to section 32-2193.36. The ninety day time  
12 period begins under this subsection on the date the department receives an  
13 application that is substantially complete.

14           3. The claimant agrees in writing to extend the time for making a  
15 decision.

16           B. If the commissioner fails to render a written decision and order on  
17 a claim within ninety calendar days or within an extended period of time  
18 provided under subsection A of this section, the claim is considered to be  
19 approved on the day following the final day for rendering the decision.

20           C. The commissioner shall give notice of a decision and order with  
21 respect to the claim to the claimant and to any judgment debtor who has filed  
22 a timely response to the claim pursuant to section 32-2193.35 as follows:

23           1. If the commissioner denies the application, the notice shall state  
24 that:

25                       The claimant's application has been denied and the  
26 claimant may pursue the application in court pursuant to section  
27 32-2193.39, Arizona Revised Statutes.

28           2. If the commissioner approves a payment to the claimant from the  
29 condominium recovery fund, the commissioner shall give notice of the decision  
30 to the judgment debtor with a copy of the decision and order and shall advise  
31 the subdivider that the subdivider's public report will be automatically  
32 suspended, pending repayment to the fund, plus interest at the rate provided  
33 by section 44-1201, ~~subsection A~~. This notice shall describe the  
34 subdivider's right to appeal the determination, if any, and shall state that  
35 failure by the judgment debtor to timely file a response constitutes a waiver  
36 of objection.

37           Sec. 8. Section 32-2193.39, Arizona Revised Statutes, is amended to  
38 read:

39           32-2193.39. Claimant's right to appeal denial of claim; service  
40 of notice of appeal; response; failure to file  
41 response

42           A. A claimant whose application is denied pursuant to section  
43 32-2193.38 may file, within six months after receiving notice of a denial of  
44 the claim, a verified application in the court in which judgment was entered  
45 in the claimant's favor for an order directing payment from the condominium

1 recovery fund based on the grounds set forth in the claimant's application to  
2 the commissioner.

3 B. The claimant shall serve a copy of the verified application on the  
4 commissioner and on the judgment debtor and shall file a certificate or  
5 affidavit of service with the court. Service on the commissioner shall be  
6 made by certified mail addressed to the commissioner. Service on a judgment  
7 debtor shall be made pursuant to section 32-2193.35 and shall include notice  
8 that an application has been filed with the court for a claim against the  
9 condominium recovery fund that was previously denied by the commissioner.

10 C. The commissioner shall advise the subdivider that, if payment is  
11 awarded, the subdivider's public report will be automatically suspended,  
12 pending repayment to the fund, plus interest at the rate provided by section  
13 44-1201, ~~subsection A~~. The commissioner shall include a description of the  
14 subdivider's right to appear and defend the action and that failure by the  
15 judgment debtor to timely file a response constitutes a waiver of objection.

16 D. The commissioner and the judgment debtor each must file a written  
17 response within thirty calendar days after being served with the application  
18 pursuant to subsection B of this section. The court shall set the matter for  
19 hearing on the petition of the claimant. The court may grant a request of  
20 the commissioner for a continuance of up to thirty calendar days and, on a  
21 showing of good cause by any party, may continue the hearing for a time that  
22 the court considers appropriate.

23 E. At the hearing, the claimant must establish compliance with the  
24 requirements of section 32-2193.34.

25 F. If the judgment debtor fails to file a written response to the  
26 application, the commissioner may compromise or settle the claim at any time  
27 during the court proceedings and, on joint petition of the applicant and the  
28 commissioner, the court shall issue an order directing payment from the  
29 condominium recovery fund.

30 Sec. 9. Section 36-3411, Arizona Revised Statutes, is amended to read:  
31 36-3411. Behavioral health services; timely reimbursement;  
32 penalties

33 A. The division shall ensure that behavioral health service providers  
34 are reimbursed within ninety days after the service provider submits a clean  
35 claim to a regional behavioral health authority.

36 B. Any contract issued by or on behalf of the division for the  
37 provision of behavioral health services shall include language outlining  
38 provisions for penalties for noncompliance with contract requirements.

39 C. If the regional behavioral health authority does not reimburse a  
40 provider as required by this section, the director shall subject the regional  
41 behavioral health authority to the penalty provisions prescribed in the  
42 contract which shall not exceed the interest charges prescribed in section  
43 44-1201, ~~subsection A~~. The director shall impose any financial penalties  
44 levied upon the regional behavioral health authority through a reduction in

1 the amount of funds payable to the regional behavioral health authority for  
2 administrative expenses.

3 D. The ninety day deadline imposed by this section is suspended while  
4 a formal grievance regarding the legitimacy of a claim is pending.

5 E. The department or a regional behavioral health authority shall not  
6 pay claims for covered services that are initially submitted more than nine  
7 months after the date of the services for which payment is claimed or that  
8 are submitted as clean claims more than twelve months after the date of  
9 service for which payment is claimed. A person dissatisfied with the denial  
10 of a claim by the department or by the regional behavioral health authority  
11 has twelve months from the date of the service for which payment is claimed  
12 to institute a grievance against the department or regional behavioral health  
13 authority.

14 F. For claims paid by the department, either directly or through a  
15 third party payor, the director may impose a penalty on a regional behavioral  
16 health authority or a service provider who submits a claim to the department  
17 for payment more than one time after the same claim had been previously  
18 denied by the department without having attempted to address the reason given  
19 for the denial. The penalty imposed by the director shall not exceed the  
20 average cost incurred by the department for processing a claim and shall be  
21 levied upon the regional behavioral health authority or service provider  
22 through reducing any future payment or payments until the amount of the  
23 penalty has been paid.

24 G. This section does not apply to services provided by a hospital  
25 pursuant to section 36-2903.01, subsection G or H, or section 36-2904,  
26 subsection H or I.

27 Sec. 10. Section 38-809, Arizona Revised Statutes, is amended to read:

28 38-809. Correction of pension payment errors; assignments  
29 prohibited; civil liability; restitution or payment  
30 of fine; violation; classification; offset of  
31 benefits

32 A. If the plan has made pension payments based on incorrect  
33 information and a person or an estate has been paid more or less than the  
34 person or estate should have been paid, the board shall adjust future  
35 payments so that the proper amount is paid. The adjustment may be made in  
36 such a manner that the equivalent actuarial present value of the benefit to  
37 which the person or estate is correctly entitled is paid.

38 B. Notwithstanding any other statute, benefits, member contributions  
39 or court fees including interest earnings and all other credits payable under  
40 the plan are not subject in any manner to anticipation, alienation, sale,  
41 transfer, assignment, pledge, encumbrance, charge, garnishment, execution or  
42 levy of any kind, either voluntary or involuntary, before actually being  
43 received by the person entitled to the benefit, contribution, earning or  
44 credit under the terms of the plan, and any attempt to dispose of any right  
45 under the terms of the plan as proscribed in this subsection is void. The

1 fund is not liable for or subject to the debts, contracts, liabilities,  
2 enlargements or torts of any person entitled to a benefit, contribution,  
3 earning or credit under the terms of the plan.

4 C. Nothing in this section exempts employee benefits of any kind from  
5 a writ of attachment, a writ of execution, a writ of garnishment and orders  
6 of assignment issued by a court of record as the result of a judgment for  
7 arrearages of child support or for child support debt.

8 D. A person who defrauds the plan or who takes, converts, steals or  
9 embezzles monies owned by or from the plan and who fails or refuses to return  
10 the monies to the plan on the board's written request is subject to a civil  
11 suit by the plan in the superior court in Maricopa county. On entry of an  
12 order finding the person has defrauded the plan or taken, converted, stolen  
13 or embezzled monies owned by or from the plan, the court shall enter an order  
14 against that person and for the plan awarding the plan all of its costs and  
15 expenses of any kind, including attorney fees, that were necessary to  
16 successfully prosecute the action. The court shall also grant the plan a  
17 judicial lien on all of the nonexempt property of the person against whom  
18 judgment is entered pursuant to this subsection in an amount equal to all  
19 amounts awarded to the plan, plus interest at the rate prescribed by section  
20 44-1201, ~~subsection A~~, until all amounts owed are paid to the plan.

21 E. If a member is convicted of, or discharged because of, theft,  
22 embezzlement, fraud or misappropriation of an employer's property or property  
23 under the control of the employer, the member is subject to restitution and  
24 fines imposed by a court of competent jurisdiction. The court may order the  
25 restitution or fines to be paid from any payments otherwise payable to the  
26 member from the plan.

27 F. A person who knowingly makes any false statement or who falsifies  
28 or permits to be falsified any record of the plan with an intent to defraud  
29 the plan is guilty of a class 1 misdemeanor. If any change or error in the  
30 records results in any member or beneficiary receiving from the plan more or  
31 less than the member or beneficiary would have been entitled to receive had  
32 the records been correct, the plan shall correct the error, and as far as  
33 practicable shall adjust the payments in such a manner that the actuarial  
34 equivalent of the benefit to which the member or beneficiary was correctly  
35 entitled to receive shall be paid. If a member is convicted of a crime  
36 pursuant to this subsection, the member is entitled to receive a lump sum  
37 payment of the member's accumulated contributions but forfeits any future  
38 compensation and benefits that would otherwise accrue to the member or the  
39 member's estate under this article.

40 G. Notwithstanding any other provision of this article, the board may  
41 offset against any benefits otherwise payable by the plan to an active or  
42 retired member or survivor any court ordered amounts awarded to the board and  
43 plan and assessed against the member or survivor.

1           Sec. 11. Section 38-849, Arizona Revised Statutes, as amended by Laws  
2 2010, chapter 118, section 10, is amended to read:

3           38-849. Limitations on receiving pension; violation;  
4           classification; reemployment after severance;  
5           reinstatement of service credits; reemployment of  
6           retired or disabled member

7           A. If a member is convicted of, or discharged because of, theft,  
8 embezzlement, fraud or misappropriation of an employer's property or property  
9 under the control of the employer, the member shall be subject to restitution  
10 and fines imposed by a court of competent jurisdiction. The court may order  
11 the restitution or fines to be paid from any payments otherwise payable to  
12 the member from the retirement system.

13           B. A person who knowingly makes any false statement or who falsifies  
14 or permits to be falsified any record of the system with an intent to defraud  
15 the system is guilty of a class 6 felony. If any change or error in the  
16 records results in any member or beneficiary receiving from the system more  
17 or less than the member or beneficiary would have been entitled to receive  
18 had the records been correct, the local board shall correct such error, and  
19 as far as practicable shall adjust the payments in such manner that the  
20 actuarial equivalent of the benefit to which such member or beneficiary was  
21 correctly entitled shall be paid. If a member is convicted of a crime  
22 specified in this subsection the member shall be entitled to receive a lump  
23 sum payment of the member's accumulated contributions but forfeits any future  
24 compensation and benefits that would otherwise accrue to the member or the  
25 member's estate under this article.

26           C. If a member who received a severance refund on termination of  
27 employment, as provided in section 38-846.02, is subsequently reemployed by  
28 an employer, the member's prior service credits shall be cancelled and  
29 service shall be credited only from the date the member's most recent  
30 reemployment period commenced. However, if the former member's reemployment  
31 with the same employer occurred within two years after the former member's  
32 termination date, and, within ninety days after reemployment the former  
33 member signs a written election consenting to reimburse the fund within one  
34 year, the former member shall be required to redeposit the amount withdrawn  
35 at the time of the former member's separation from service, with interest  
36 thereon at the rate of nine per cent for each year compounded each year from  
37 the date of withdrawal to the date of repayment. On satisfaction of this  
38 obligation the member's prior service credits shall be reinstated.

39           D. If a retired member becomes employed in any capacity by the  
40 employer from which the member retired before sixty consecutive days after  
41 the member's date of retirement, the system shall not make pension payments  
42 to the retired member during the period of reemployment. If a retired member  
43 is reemployed by an employer, no contributions shall be made on the retired  
44 member's account, nor any service credited, during the period of the  
45 reemployment. Notwithstanding this subsection, if a retired member

1 subsequently becomes employed in the same position by the employer from which  
2 the member retired, the system shall not make pension payments to the retired  
3 member during the period of reemployment. On subsequent termination of  
4 employment by the retired member, the retired member is entitled to receive a  
5 pension based on the member's service and compensation before the date of the  
6 member's reemployment. If a member who retired under disability is  
7 reemployed by an employer as an employee, that member shall be treated as if  
8 the member had been on an uncompensated leave of absence during the period of  
9 the member's disability retirement and shall be a contributing member of the  
10 system. Within ten days after a retired member is reemployed by the employer  
11 from which the member retired, the employer shall advise the ~~fund-manager~~  
12 ~~BOARD~~ in writing as to whether the retired member has been reemployed in the  
13 same position from which the member retired. The ~~fund-manager~~ ~~BOARD~~ shall  
14 review all reemployment determinations. If the ~~fund-manager~~ ~~BOARD~~ is not  
15 provided the necessary information to make a reemployment determination, the  
16 ~~fund-manager~~ ~~BOARD~~ shall suspend pension payments until information is  
17 received and a determination is made that the reemployment meets the  
18 requirements of this subsection. For the purposes of this subsection, "same  
19 position" means the member is in a position where the member performs  
20 substantially similar duties that were performed and exercises substantially  
21 similar authority that was exercised by the retired member before retirement.

22 E. A person who defrauds the system or who takes, converts, steals or  
23 embezzles monies owned by or from the system and who fails or refuses to  
24 return the monies to the system on the ~~fund-manager's~~ ~~BOARD'S~~ written request  
25 is subject to civil suit by the system in the superior court in Maricopa  
26 county. On entry of an order finding the person has defrauded the system or  
27 taken, converted, stolen or embezzled monies owned by or from the system, the  
28 court shall enter an order against that person and for the system awarding  
29 the system all of its costs and expenses of any kind, including attorney  
30 fees, that were necessary to successfully prosecute the action. The court  
31 shall also grant the system a judicial lien on all of the nonexempt property  
32 of the person against whom judgment is entered pursuant to this subsection in  
33 an amount equal to all amounts awarded to the system, plus interest at the  
34 rate prescribed by section 44-1201, ~~subsection A~~, until all amounts owed are  
35 paid to the system.

36 F. Notwithstanding any other provision of this article, the ~~fund~~  
37 ~~manager~~ ~~BOARD~~ may offset against any benefits otherwise payable by the system  
38 to an active or retired member or survivor any court ordered amounts awarded  
39 to the ~~fund-manager~~ ~~BOARD~~ and system and assessed against the member or  
40 survivor.

41 Sec. 12. Repeal

42 Section 38-849, Arizona Revised Statutes, as amended by Laws 2010,  
43 chapter 200, section 45, is repealed.

1           Sec. 13. Section 38-897, Arizona Revised Statutes, is amended to read:  
2           38-897. Assignments prohibited; liability of fund

3           A. The right of an individual to a pension, to a refund of accumulated  
4 member contributions, to the pension itself or to any other right accrued or  
5 accruing to any individual, and the monies and assets of the retirement plan,  
6 are not subject to execution, garnishment, attachment, the operation of  
7 bankruptcy or insolvency law or other process of law except a qualified  
8 domestic relations order and are unassignable except as may be otherwise  
9 specifically provided.

10          B. Any attempt to anticipate, alienate, sell, transfer, assign,  
11 pledge, encumber, charge or otherwise dispose of any right provided in  
12 subsection A is void. The fund is not liable in any manner for or subject to  
13 the debts, contracts, liabilities, engagements or torts of any person  
14 entitled to these rights.

15          C. This section does not exempt employee benefits of any kind from a  
16 writ of attachment, a writ of execution, a writ of garnishment and orders of  
17 assignment issued by a court of record as the result of a judgment for  
18 arrearages of child support or for child support debt.

19          D. A person who defrauds the plan or who takes, converts, steals or  
20 embezzles monies owned by or from the plan and who fails or refuses to return  
21 the monies to the plan on the board's written request is subject to civil  
22 suit by the plan in the superior court in Maricopa county. On entry of an  
23 order finding the person has defrauded the plan or taken, converted, stolen  
24 or embezzled monies owned by or from the plan, the court shall enter an order  
25 against that person and for the plan awarding the plan all of its costs and  
26 expenses of any kind, including attorney fees, that were necessary to  
27 successfully prosecute the action. The court shall also grant the plan a  
28 judicial lien on all of the nonexempt property of the person against whom  
29 judgment is entered pursuant to this subsection in an amount equal to all  
30 amounts awarded to the plan, plus interest at the rate prescribed by section  
31 44-1201, ~~subsection A~~, until all amounts owed are paid to the plan.

32          E. Notwithstanding any other provision of this article, the board may  
33 offset against any benefits otherwise payable by the plan to an active or  
34 retired member or survivor any court ordered amounts awarded to the board and  
35 plan and assessed against the member or survivor.

36           Sec. 14. Section 38-912, Arizona Revised Statutes, is amended to read:  
37           38-912. Civil liability; restitution or payment of fine;

38                           violation; classification; offset of benefits

39          A. A person who defrauds the plan or who takes, converts, steals or  
40 embezzles monies owned by or from the plan and who fails or refuses to return  
41 the monies to the plan on the board's written request is subject to civil  
42 suit by the plan in the superior court in Maricopa county. On entry of an  
43 order finding the person has defrauded the plan or taken, converted, stolen  
44 or embezzled monies owned by or from the plan, the court shall enter an order  
45 against that person and for the plan awarding the plan all of its costs and

1 expenses of any kind, including attorney fees, that were necessary to  
2 successfully prosecute the action. The court shall also grant the plan a  
3 judicial lien on all of the nonexempt property of the person against whom  
4 judgment is entered pursuant to this subsection in an amount equal to all  
5 amounts awarded to the plan, plus interest at the rate prescribed by section  
6 44-1201, ~~subsection A~~, until all amounts owed are paid to the plan.

7 B. If a member is convicted of, or discharged because of, theft,  
8 embezzlement, fraud or misappropriation of an employer's property or property  
9 under the control of the employer, the member is subject to restitution and  
10 fines imposed by a court of competent jurisdiction. The court may order the  
11 restitution or fines to be paid from any payments otherwise payable to the  
12 member from the plan.

13 C. A person who knowingly makes any false statement or who falsifies  
14 or permits to be falsified any record of the plan with an intent to defraud  
15 the plan is guilty of a class 6 felony. If any change or error in the  
16 records results in any member or beneficiary receiving from the plan more or  
17 less than the member or beneficiary would have been entitled to receive had  
18 the records been correct, the local board shall correct the error, and as far  
19 as practicable shall adjust the payments in a manner that the actuarial  
20 equivalent of the benefit to which the member or beneficiary was correctly  
21 entitled shall be paid. If a member is convicted of a crime pursuant to this  
22 subsection the member is entitled to receive a lump sum payment of the  
23 member's accumulated contributions but forfeits any future compensation and  
24 benefits that would otherwise accrue to the member or the member's estate  
25 under this article.

26 D. Notwithstanding any other provision of this article, the board may  
27 offset against any benefits otherwise payable by the plan to a member or  
28 survivor any court ordered amounts awarded to the board and plan and assessed  
29 against the member or survivor.

30 Sec. 15. Section 44-1201, Arizona Revised Statutes, is amended to  
31 read:

32 44-1201. Rate of interest for loan or indebtedness; interest on  
33 judgments

34 A. Interest on any loan, indebtedness, ~~judgment~~ or other obligation  
35 shall be at the rate of ten per cent per annum, unless a different rate is  
36 contracted for in writing, in which event any rate of interest may be agreed  
37 to. INTEREST ON ANY JUDGMENT THAT IS BASED ON A WRITTEN AGREEMENT EVIDENCING  
38 A LOAN, INDEBTEDNESS OR OBLIGATION THAT BEARS A RATE OF INTEREST NOT IN  
39 EXCESS OF THE MAXIMUM PERMITTED BY LAW SHALL BE AT THE RATE OF INTEREST  
40 PROVIDED IN THE AGREEMENT AND SHALL BE SPECIFIED IN THE JUDGMENT.

41 B. UNLESS SPECIFICALLY PROVIDED FOR IN STATUTE OR A DIFFERENT RATE IS  
42 CONTRACTED FOR IN WRITING, INTEREST ON ANY JUDGMENT SHALL BE AT THE LESSER OF  
43 TEN PER CENT PER ANNUM OR AT A RATE PER ANNUM THAT IS EQUAL TO ONE PER CENT  
44 PLUS THE PRIME RATE AS PUBLISHED BY THE BOARD OF GOVERNORS OF THE FEDERAL  
45 RESERVE SYSTEM IN STATISTICAL RELEASE H.15 OR ANY PUBLICATION THAT MAY

1 SUPERSEDE IT ON THE DATE THAT THE JUDGMENT IS ENTERED. THE JUDGMENT SHALL  
2 STATE THE APPLICABLE INTEREST RATE AND IT SHALL NOT CHANGE AFTER IT IS  
3 ENTERED.

4 ~~B.~~ C. Interest on a judgment on a condemnation proceeding, including  
5 interest ~~which~~ THAT is payable pursuant to section 12-1123, subsection B,  
6 shall be payable as follows:

7 1. If instituted by a city or town, at the rate prescribed by section  
8 9-409.

9 2. If instituted by a county, at the rate prescribed by section  
10 11-269.04.

11 3. If instituted by the department of transportation, at the rate  
12 prescribed by section 28-7101.

13 4. If instituted by a county flood control district, a power district  
14 or an agricultural improvement district, at the rate prescribed by section  
15 48-3628.

16 ~~C. A judgment given on an agreement bearing a higher rate not in  
17 excess of the maximum permitted by law shall bear the rate of interest  
18 provided in the agreement, and it shall be specified in the judgment.~~

19 D. A COURT SHALL NOT AWARD EITHER OF THE FOLLOWING:

20 1. PREJUDGMENT INTEREST FOR ANY UNLIQUIDATED, FUTURE, PUNITIVE OR  
21 EXEMPLARY DAMAGES THAT ARE FOUND BY THE TRIER OF FACT.

22 2. INTEREST FOR ANY FUTURE, PUNITIVE OR EXEMPLARY DAMAGES THAT ARE  
23 FOUND BY THE TRIER OF FACT.

24 E. FOR THE PURPOSES OF SUBSECTION D OF THIS SECTION, "FUTURE DAMAGES"  
25 MEANS DAMAGES THAT WILL BE INCURRED AFTER THE DATE OF THE JUDGMENT AND  
26 INCLUDES THE COSTS OF ANY INJUNCTIVE OR EQUITABLE RELIEF THAT WILL BE  
27 PROVIDED AFTER THE DATE OF THE JUDGMENT.

28 F. IF AWARDED, PREJUDGMENT INTEREST SHALL BE AT THE RATE DESCRIBED IN  
29 SUBSECTION A OR B OF THIS SECTION.

30 Sec. 16. Findings and purpose

31 The legislature finds that:

32 1. Both across the nation and in Arizona, the size of damage awards in  
33 civil actions has escalated in recent years.

34 2. Under rule 7(a)(2), Arizona rules of civil appellate procedure, in  
35 order to stay the execution of the judgment while they appeal, defendants  
36 seeking to appeal an adverse judgment in Arizona are required to post a bond  
37 that normally equals the full amount of the judgment plus costs, interest and  
38 any damages that might be attributed to the stay pending appeal.

39 3. The existence of an overly large appeal bond infringes on the due  
40 process rights of appellants. Under such a system, defendants who are  
41 subject to overly large damage awards may simply be unable to post a bond to  
42 protect their assets and assert their appeal rights. They may be forced into  
43 bankruptcy or compelled to settle their case, thereby rendering the right to  
44 appeal nearly meaningless.

1           4. Limiting the bond requirement to the lesser of the value of the  
2 judgment, fifty per cent of the appellant's net worth or twenty-five million  
3 dollars regardless of the value of the judgment would ensure that defendants  
4 can fully exercise their fundamental right to appeal.

5           5. Enacting a limit on the bond requirement to stay the execution of a  
6 judgment impacts the rights of appellants and is therefore a matter of  
7 substantive law that falls within the jurisdiction of the legislature.

8           Sec. 17. Applicability

9           A. Section 12-2108, Arizona Revised Statutes, as added by this act,  
10 applies to all actions that are pending on or that are filed on or after the  
11 effective date of this act.

12           B. Section 44-1201, Arizona Revised Statutes, as amended by this act,  
13 applies to all loans that are entered into, all debts and obligations that  
14 are incurred and all judgments that are entered on or after the effective  
15 date of this act.