

REFERENCE TITLE: attorney general; compromises; settlements; deposit

State of Arizona
House of Representatives
Fifty-first Legislature
First Regular Session
2013

HB 2396

Introduced by
Representative Kavanagh

AN ACT

AMENDING SECTIONS 35-142, 37-109 AND 41-192, ARIZONA REVISED STATUTES;
RELATING TO THE ATTORNEY GENERAL.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 35-142, Arizona Revised Statutes, is amended to
3 read:

4 35-142. Monies kept in funds separate from state general fund;
5 receipt and withdrawal

6 A. All monies received for and belonging to the state shall be
7 deposited in the state treasury and credited to the state general fund except
8 the following, which shall be placed and retained in separate funds:

9 1. The unexpendable principal of monies received from federal land
10 grants shall be placed in separate funds and the account of each such
11 separate fund shall bear a title indicating the source and the institution or
12 purpose to which such fund belongs.

13 2. The interest, rentals and other expendable money received as income
14 from federal land grants shall be placed in separate accounts, each account
15 bearing a title indicating the source and the institution or purpose to which
16 the fund belongs. Such expendable monies shall be expended only as
17 authorized, regulated and controlled by the general appropriation act or
18 other act of the legislature.

19 3. All private or quasi-private monies authorized by law to be paid to
20 or held by the state treasurer shall be placed in separate accounts, each
21 account bearing a title indicating the source and purpose of such fund.

22 4. All monies legally pledged to retirement of building indebtedness
23 or bonds issued by those institutions authorized to incur such indebtedness
24 or to issue such bonds shall be placed in separate accounts.

25 5. Monies of a multi-county water conservation district authorized by
26 law to be paid to or held by the state treasurer shall be placed in separate
27 accounts, each account bearing a title indicating the source and purpose of
28 such fund.

29 6. All monies collected by the Arizona game and fish department shall
30 be deposited in a special fund known as the state game and fish protection
31 fund for the use of the Arizona game and fish commission in carrying out the
32 provisions of title 17.

33 7. All federal monies that are received by the department of economic
34 security for family assistance benefits and medical eligibility as a result
35 of efficiencies developed by the department of economic security and that
36 would otherwise revert to the state general fund pursuant to section 35-190
37 shall be retained for use by the department of economic security in
38 accordance with the terms and conditions imposed by the federal funding
39 source in an account or accounts established or authorized by the state
40 treasurer.

41 8. Monies designated by law as special state funds shall not be
42 considered a part of the general fund. Unless otherwise prescribed by law,
43 the state treasurer shall be the custodian of all such funds.

44 9. All monies received and any accounts established and maintained by
45 the director of the Arizona state retirement system or the administrator of

1 the public safety personnel retirement system, the corrections officer
2 retirement plan and the elected officials' retirement plan.

3 10. Monies received by a state agency or institution as a gift, devise
4 or donation shall not be considered a part of the state general fund or
5 transferred to the state general fund unless the gift, devise or donation
6 specifically authorizes a general state use for the monies. A state agency
7 or institution that receives a monetary gift, devise or donation shall
8 account for those monies separately.

9 B. No money shall be received or held by the state treasurer except as
10 authorized by law, and in every instance the treasurer shall issue a receipt
11 for money received and shall record the transaction in the statewide
12 accounting system. No money shall be withdrawn from the treasury except on
13 the warrant or electronic funds transfer voucher of the department of
14 administration.

15 C. MONIES RESULTING FROM COMPROMISES OR SETTLEMENTS BY OR AGAINST THIS
16 STATE SHALL BE CREDITED TO THE STATE GENERAL FUND UNLESS SPECIFICALLY
17 CREDITED TO ANOTHER FUND BY LAW. A FUND SHALL NOT BE ESTABLISHED ON THE
18 BASIS OF A COURT ORDER WITHOUT PRIOR LEGISLATIVE AUTHORIZATION.

19 ~~E.~~ D. All federal monies granted and paid to the state by the federal
20 government shall be accounted for in the accounts or funds of the state in
21 the necessary detail to meet federal and state accounting, budgetary and
22 auditing requirements, and all appropriations for matching such federal
23 monies shall be transferred from the general fund to such separate funds as
24 needed, except as otherwise required by the federal government.

25 ~~D.~~ E. Nothing in this section requires the establishment of separate
26 accounts or funds for such federal monies unless otherwise required by
27 federal or state law. The department of administration has the authority to
28 use the most efficient system of accounts and records, consistent with legal
29 requirements and standard and necessary fiscal safeguards.

30 ~~E.~~ F. Nothing in this section precludes the creation by the
31 department of administration of a clearing account or other acceptable
32 accounting method to effect prompt payment of claims from an approved budget
33 or appropriation. The department of administration shall report each account
34 or fund established or cancelled to the directors of the joint legislative
35 budget committee and the governor's office of strategic planning and
36 budgeting.

37 ~~F.~~ G. Nothing in this section or any other section precludes the use
38 of monies kept in funds separate from the general fund, the interest from
39 which accrues to the general fund, for payment of claims against the general
40 fund, provided sufficient monies remain available for payment of claims
41 against such funds.

42 ~~G.~~ H. The department of administration may issue warrants for
43 qualified expenditures of federal program monies before they are deposited in
44 the state treasury. The receipt of federal monies shall be timed to
45 coincide, as closely as administratively feasible, with the redemption of

1 warrants by the state treasurer. The department of administration shall
2 limit expenditures to the amount that has been made available for the use
3 under the grant award by the federal government. The state agency initiating
4 the expenditures is responsible for ensuring that expenditures qualify for
5 coverage under the guidelines of the federal grant award.

6 ~~H~~ I. The department of administration shall establish the policies
7 and procedures for all state agencies for drawing federal monies. When the
8 established method results in federal monies being held by this state, the
9 department of administration may use the interest earned on the monies to pay
10 the federal government for any related interest liability. If an interest
11 liability is incurred due to a state agency varying from the established
12 policies and procedures, the department of administration shall charge the
13 appropriate agency account or fund. Any federal interest liability owed to
14 this state as a result of the delayed federal disbursements shall be used to
15 offset this state's interest liability to the federal government. Any
16 remaining interest earnings shall be deposited in the state general fund.

17 ~~I~~ J. Any state agency or authorized agent of a state agency may
18 accept credit cards pursuant to an agreement entered into by the state
19 treasurer pursuant to section 35-315 for the payment of any amount due to
20 that agency or agent or this state.

21 ~~J~~ K. Except for the department of revenue for tax payments, agencies
22 or authorized agents on behalf of state agencies that accept credit cards
23 shall deduct any applicable discount fee and processing fee associated with
24 the transaction amount before depositing the net amount in the appropriate
25 state fund. No other reduction is permitted against the transaction amount.
26 The net amount deposited in the appropriate state fund shall be considered as
27 the full deposit required by law of monies received by the agency or the
28 authorized agent. Payment of any applicable discount fee and processing fee
29 shall be accounted for in the annual report submitted to the governor's
30 office of strategic planning and budgeting in accordance with section
31 41-1273. The transaction amount of any credit card transaction shall not be
32 reduced by any discount fee or processing fee in an amount in excess of the
33 merchant card settlement fees reflected in the state banking contract with
34 the state treasurer's office.

35 ~~K~~ L. Any state agency that contracts with an authorized agent for
36 the electronic processing of transactions pursuant to title 41, chapter 23
37 may include a provision in the contract to allow the authorized agent to
38 impose a convenience fee. If allowed, the convenience fee shall be charged
39 to the cardholder in addition to the transaction amount, except for the
40 following:

41 1. Except as provided in subsection ~~R~~ S of this section, any permits,
42 licenses or other authorizations needed to pursue a trade or occupation in
43 this state.

1 2. Except as provided in subsection ~~R~~ S of this section, any permits,
2 licenses or other authorizations needed to establish, expand or operate a
3 business in this state.

4 3. Except as provided in subsection ~~R~~ S of this section, any permits,
5 licenses or other authorizations needed to register a vehicle or license a
6 driver in this state.

7 ~~L~~ M. Each state agency or its authorized agent shall:

8 1. Deduct the amount of the convenience fee before depositing the
9 transaction amount or the transaction amount reduced by the discount fee or
10 the processing fee, or both, into the appropriate state fund.

11 2. Not deduct any part of the convenience fee from the transaction
12 amount before depositing the net amount into the appropriate state fund.

13 3. Deduct the amount of the discount fee or the processing fee, or
14 both, from the transaction amount before depositing the net amount into the
15 appropriate state fund.

16 ~~M~~ N. The net amount deposited in the appropriate state fund pursuant
17 to subsection ~~K~~ ~~or~~ L OR M of this section shall be considered as the full
18 deposit of monies that is required by law and that is received by the agency.

19 ~~N~~ O. Notwithstanding section 35-142.01, convenience fees received by
20 a state agency or its authorized agent are limited to, and may be used to
21 offset, the costs imposed by the authorized agent in processing the
22 transactions.

23 ~~O~~ P. When the percentage of electronic transactions first exceeds at
24 least thirty per cent of a state agency's total transactions, the state
25 agency shall perform a cost benefit report, including costs of convenience
26 fees, the amount of revenue generated and any realized cost savings.

27 ~~P~~ Q. State agencies shall report the number of transactions, the
28 number of electronic transactions, the total dollar amount of transactions
29 processed, the total dollar amount of any discount fee, the total dollar
30 amount of any processing fee and the total dollar amount of any convenience
31 fee charged, deducted or paid pursuant to subsections ~~J~~ ~~and~~ K AND L of this
32 section annually by October 1 to the governor, the department of
33 administration and the joint legislative budget committee.

34 ~~Q~~ R. Nothing in this section or any other provision of law
35 authorizes any state agency, authorized agent of any state agency or budget
36 unit to establish a bank account for any government monies. All monies
37 received by or on behalf of this state shall be deposited with and in the
38 custody of the state treasurer or in an account that is authorized by the
39 state treasurer pursuant to this section. This subsection does not apply to
40 monies received and any accounts established and maintained by the director
41 of the Arizona state retirement system or the administrator of the public
42 safety personnel retirement system, the corrections officer retirement plan
43 and the elected officials' retirement plan.

1 ~~R.~~ S. If a state agency provides an alternative method of payment,
2 the convenience fee may be charged to the cardholder in addition to the
3 transaction amount.

4 Sec. 2. Section 37-109, Arizona Revised Statutes, is amended to read:

5 37-109. Alternative payment methods

6 At the commissioner's sole discretion, the commissioner may accept fees
7 imposed pursuant to section 37-107 by alternative payment methods, including
8 credit and charge cards, pursuant to section 35-142, subsection ~~I~~ J, debit
9 cards and electronic funds transfers or other alternative payment methods,
10 pursuant to section 35-315, but the department is not obligated to accept any
11 payment using an alternative payment method.

12 Sec. 3. Section 41-192, Arizona Revised Statutes, is amended to read:

13 41-192. Powers and duties of attorney general; restrictions on
14 state agencies as to legal counsel; exceptions;
15 compromise and settlement monies

16 A. The attorney general shall have charge of and direct the department
17 of law and shall serve as chief legal officer of the state. The attorney
18 general shall:

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

21 2. Establish administrative and operational policies and procedures
22 within his department.

23 3. Approve long-range plans for developing departmental programs
24 therein, and coordinate the legal services required by other departments of
25 this state or other state agencies.

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

28 5. Represent political subdivisions, school districts and
29 municipalities in suits to enforce state or federal statutes pertaining to
30 antitrust, restraint of trade or price-fixing activities or conspiracies, if
31 the attorney general notifies in writing the political subdivisions, school
32 districts and municipalities of the attorney general's intention to bring any
33 such action on its behalf. At any time within thirty days after the
34 notification, the political subdivisions, school districts and
35 municipalities, by formal resolution of its governing body, may withdraw the
36 authority of the attorney general to bring the intended action on its behalf.

37 6. In any action brought by the attorney general pursuant to state or
38 federal statutes pertaining to antitrust, restraint of trade, or price-fixing
39 activities or conspiracies for the recovery of damages by this state or any
40 of its political subdivisions, school districts or municipalities, in
41 addition to the attorney general's other powers and authority, the attorney
42 general on behalf of this state may enter into contracts relating to the
43 investigation and prosecution of such action with any other party plaintiff
44 who has brought a similar action for the recovery of damages and with whom
45 the attorney general finds it advantageous to act jointly or to share common

1 expenses or to cooperate in any manner relative to such action. In any such
2 action, notwithstanding any other laws to the contrary, the attorney general
3 may undertake, among other things, to render legal services as special
4 counsel or to obtain the legal services of special counsel from any
5 department or agency of the United States, of this state or any other state
6 or any department or agency thereof or any county, city, public corporation
7 or public district in this state or in any other state that has brought or
8 intends to bring a similar action for the recovery of damages or their duly
9 authorized legal representatives in such action.

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

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

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

25 1. Organize the department into such bureaus, subdivisions or units as
26 he deems most efficient and economical, and consolidate or abolish 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 state
33 or any department, board or agency of this state. If the compromise or
34 settlement involves a particular department, board or agency of this state,
35 the compromise or settlement shall be first approved by the department, board
36 or agency. If no department or agency is named or otherwise materially
37 involved, the approval of the governor shall be first obtained.

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

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

44 D. Notwithstanding any law to the contrary, except as provided in
45 subsections E and F of this section, no state agency other than the attorney

1 general shall employ legal counsel or make an expenditure or incur an
2 indebtedness for legal services, but the following are exempt from this
3 section:

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

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

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

32 G. Any department or agency of this state authorized by law to
33 maintain a legal division or incur expenses for legal services from funds
34 derived from sources other than the general revenue of the state, or from any
35 special or trust fund, shall pay from such source of revenue or special or
36 trust fund into the general fund of the state, to the extent such funds are
37 available and upon a reimbursable basis for warrants drawn, the amount
38 actually expended by the department of law within legislative appropriations
39 for such legal division or legal services.

40 H. Appropriations made pursuant to subsection G of this section shall
41 not be subject to lapsing provisions otherwise provided by law. Services for
42 departments or agencies to which this subsection and subsection F of this
43 section are applicable shall be performed by special or regular assistants to
44 the attorney general.

1 I. Notwithstanding section 35-148, monies received by the attorney
2 general from charges to state agencies and political subdivisions for legal
3 services relating to interagency service agreements shall be deposited,
4 pursuant to sections 35-146 and 35-147, in an attorney general agency
5 services fund. Monies in the fund are subject to legislative appropriation
6 and are exempt from the provisions of section 35-190 relating to lapsing of
7 appropriations.

8 J. UNLESS OTHERWISE PROVIDED BY LAW, MONIES RESULTING FROM COMPROMISES
9 AND SETTLEMENTS ENTERED INTO PURSUANT TO SUBSECTION B OF THIS SECTION SHALL
10 BE DEPOSITED INTO THE STATE TREASURY AND CREDITED TO THE STATE GENERAL FUND
11 PURSUANT TO SECTION 35-142. MONIES RESULTING FROM A COMPROMISE OR SETTLEMENT
12 ARE NOT CONSIDERED CUSTODIAL, PRIVATE OR QUASI-PRIVATE MONIES UNLESS
13 SPECIFICALLY PROVIDED BY LAW.