

State of Arizona
Senate
Fiftieth Legislature
First Regular Session
2011

SENATE BILL 1212

AN ACT

AMENDING TITLE 12, CHAPTER 12, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 12-2108; AMENDING SECTIONS 25-510 AND 44-1201, ARIZONA REVISED STATUTES; RELATING TO CIVIL ACTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

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

4 12-2108. Preservation of right to appeal judgment without
5 execution

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

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

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

18 C. NOTWITHSTANDING SUBSECTION A, IF AN APPELLANT PROVES BY CLEAR AND
19 CONVINCING EVIDENCE THAT THE APPELLANT IS LIKELY TO SUFFER SUBSTANTIAL
20 ECONOMIC HARM IF REQUIRED TO POST BOND IN AN AMOUNT REQUIRED UNDER SUBSECTION
21 A, THE TRIAL COURT MAY LOWER THE BOND AMOUNT TO AN AMOUNT THAT WILL NOT CAUSE
22 THE APPELLANT SUBSTANTIAL ECONOMIC HARM.

23 Sec. 2. Section 25-510, Arizona Revised Statutes, is amended to read:

24 25-510. Receiving and disbursing support and maintenance
25 monies; arrearages; interest

26 A. The support payment clearinghouse established pursuant to section
27 46-441 shall receive and disburse all monies, including fees and costs,
28 applicable to support and maintenance unless the court has ordered that
29 support or maintenance be paid directly to the party entitled to receive the
30 support or maintenance. Within two business days the clerk of the superior
31 court shall transmit to the support payment clearinghouse any maintenance and
32 support payments received by the clerk. Monies received by the support
33 payment clearinghouse in cases not enforced by the state pursuant to title
34 IV-D of the social security act shall be distributed in the following
35 priority:

- 36 1. Current child support or current court ordered payments for the
37 support of a family when combined with the child support obligation.
38 2. Current spousal maintenance.
39 3. The current monthly fee prescribed in subsection D of this section
40 for handling support or spousal maintenance payments.
41 4. Past due support reduced to judgment and then to associated
42 interest.
43 5. Past due spousal maintenance reduced to judgment and then to
44 associated interest.

1 6. Past due support not reduced to judgment and then to associated
2 interest.

3 7. Past due spousal maintenance not reduced to judgment and then to
4 associated interest.

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

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

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

26 D. The support payment clearinghouse shall receive a monthly fee for
27 handling support and maintenance payments. The director, by rule, may
28 establish this fee. The court shall order payment of the handling fee as
29 part of the order for support or maintenance. The handling fee shall not be
30 deducted from the support or maintenance portion of the payment.

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

39 F. Past support reduced to a final written money judgment before
40 September 26, 2008 and pursuant to section 25-320, subsection C or section
41 25-809, subsection B accrues interest at the rate of ten per cent per annum
42 ~~pursuant to section 44-1201~~ beginning on entry of the judgment by the court
43 and accrues interest only on the principal and not on interest. Past support
44 reduced to a final written money judgment beginning on September 26, 2008 and

1 pursuant to section 25-320, subsection C or section 25-809, subsection B does
2 not accrue interest for any time period.

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

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

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

31 Sec. 3. Section 44-1201, Arizona Revised Statutes, is amended to read:

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

34 A. EXCEPT AS PROVIDED IN SUBSECTION C OF THIS SECTION AND IN SECTION
35 25-510, interest on any loan, indebtedness, judgment or other obligation
36 shall be ~~at the rate of~~ LESSER OF ten per cent per annum OR THE AMOUNT THAT
37 IS EQUAL TO THREE PER CENT PLUS THE PRIME RATE AS PUBLISHED BY THE BOARD OF
38 GOVERNORS OF THE FEDERAL RESERVE SYSTEM IN STATISTICAL RELEASE H.15 OR ANY
39 PUBLICATION THAT MAY SUPERSEDE IT ON THE DAY THAT THE LOAN IS ENTERED INTO,
40 THE INDEBTEDNESS OR OTHER OBLIGATION IS INCURRED OR THE JUDGMENT IS ENTERED,
41 unless a different rate is contracted for in writing, ~~in which event any rate~~
42 ~~of interest may be agreed to.~~

43 B. IF A DIFFERENT RATE IS CONTRACTED FOR IN WRITING, THAT RATE APPLIES
44 IF IT IS NOT HIGHER THAN FIVE PER CENT MORE THAN THE RATE THAT WOULD
45 OTHERWISE APPLY PURSUANT TO SUBSECTION A OF THIS SECTION. THE LOAN DOCUMENTS

1 SHALL STATE THE APPLICABLE INTEREST RATE, WHICH SHALL NOT VARY ONCE THE LOAN
2 IS ENTERED INTO. THE DOCUMENTS RELATING TO ANY INDEBTEDNESS OR OTHER
3 OBLIGATION SHALL STATE THE APPLICABLE INTEREST RATE, WHICH SHALL NOT VARY
4 ONCE THE INDEBTEDNESS OR THE OBLIGATION IS INCURRED. THE JUDGMENT SHALL
5 STATE THE APPLICABLE INTEREST RATE, WHICH SHALL NOT VARY ONCE ENTERED.

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

9 1. If instituted by a city or town, at the rate prescribed by section
10 9-409.

11 2. If instituted by a county, at the rate prescribed by section
12 11-269.04.

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

15 4. If instituted by a county flood control district, a power district
16 or an agricultural improvement district, at the rate prescribed by section
17 48-3628.

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

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

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

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

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

30 F. IF AWARDED, PREJUDGMENT INTEREST SHALL BE AT THE RATE DESCRIBED IN
31 SUBSECTION A OF THIS SECTION.

32 Sec. 4. Findings and purpose

33 The legislature finds that:

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

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

41 3. The existence of an overly large appeal bond infringes on the due
42 process rights of appellants. Under such a system, defendants who are
43 subject to overly large damage awards may simply be unable to post a bond to
44 protect their assets and assert their appeal rights. They may be forced into

1 bankruptcy or compelled to settle their case, thereby rendering the right to
2 appeal nearly meaningless.

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

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

10 Sec. 5. Applicability

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

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