

State of Arizona
Senate
Fifty-third Legislature
Second Regular Session
2018

CHAPTER 253
SENATE BILL 1274

AN ACT

AMENDING SECTIONS 11-641, 11-642, 35-212 AND 35-213, ARIZONA REVISED
STATUTES; RELATING TO PUBLIC MONIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 11-641, Arizona Revised Statutes, is amended to
3 read:

4 11-641. Monies illegally paid; liability; recovery

5 A. ~~When~~ IF a board of supervisors OR A COUNTY OR SCHOOL DISTRICT
6 OFFICER, EMPLOYEE OR AGENT, without authority of law, orders OR CAUSES any
7 ~~money~~ PUBLIC MONIES TO BE paid ~~from the county treasury~~, the board OR
8 COUNTY OR SCHOOL DISTRICT OFFICER, EMPLOYEE OR AGENT and the party in
9 whose favor the order is made ~~shall be~~ ARE jointly and severally liable
10 for the ~~money~~ MONIES with interest at the legal rate, and twenty ~~per cent~~
11 PERCENT additional on the principal amount. If the ~~money is~~ MONIES ARE
12 paid on a claim presented by a member of the board, the supervisor
13 presenting the claim and the board ~~shall be~~ ARE jointly and severally
14 liable for the ~~money~~ MONIES with interest at the legal rate, and twenty
15 ~~per cent~~ PERCENT additional on the principal amount.

16 B. A COUNTY OR SCHOOL DISTRICT OFFICER, EMPLOYEE OR AGENT WHO IS
17 RESPONSIBLE FOR DISBURSING PUBLIC MONIES PURSUANT TO A WARRANT OR OTHER
18 FORM OF CLAIM THAT DOES NOT ORIGINATE FROM THE OFFICER, EMPLOYEE OR AGENT
19 MAKING THE DISBURSAL MAY NOT BE HELD LIABLE UNDER SUBSECTION A OF THIS
20 SECTION FOR AN ILLEGAL PAYMENT OF PUBLIC MONIES UNLESS THE COUNTY OR
21 SCHOOL DISTRICT OFFICER, EMPLOYEE OR AGENT RESPONSIBLE FOR DISBURSING
22 PUBLIC MONIES KNEW OR SHOULD HAVE KNOWN THAT A WARRANT OR OTHER CLAIM
23 WOULD RESULT IN AN ILLEGAL PAYMENT.

24 ~~B.~~ C. If an illegal payment of ~~money~~ MONIES is made as described
25 in subsection A OF THIS SECTION, the county attorney ~~shall~~ MAY institute
26 an action in the name of the county, against the board of supervisors ~~and~~
27 ~~others liable~~ OR COUNTY OR SCHOOL DISTRICT OFFICER, EMPLOYEE OR AGENT, to
28 enjoin the payment of the ~~money~~ MONIES, or if ~~it has been~~ paid, to recover
29 ~~it~~ THE MONIES with interest at the legal rate, and twenty ~~per cent~~ PERCENT
30 additional on the principal amount, to be paid into the county treasury to
31 the credit of the fund from which the allowance was made.

32 ~~C.~~ D. The board of supervisors may not dismiss, compromise or in
33 any way control such AN action. ~~No~~ A bond ~~shall be~~ IS NOT required of a
34 county in the action, on an injunction, ~~or~~ or on an appeal.

35 Sec. 2. Section 11-642, Arizona Revised Statutes, is amended to
36 read:

37 11-642. Action by taxpayer; recovery of monies illegally paid

38 A TAXPAYER OF THE COUNTY MAY REQUEST, IN WRITING, THE COUNTY
39 ATTORNEY TO INSTITUTE AN ACTION PURSUANT TO SECTION 11-641. If ~~a~~ THE
40 county attorney fails for twenty days after THE written request ~~made by a~~
41 ~~taxpayer of the county~~ to institute an action, ~~as provided in section~~
42 ~~11-641, then~~ any taxpayer of the county may bring the action in ~~his~~ THE
43 TAXPAYER'S own name and at ~~his~~ THE TAXPAYER'S own cost, with the same
44 effect as if brought by the county attorney, TO RECOVER PUBLIC MONIES FROM
45 THE PUBLIC BODY OF THE COUNTY THAT ORDERED OR CAUSED THE ILLEGAL PAYMENT.
46 The person instituting the action shall execute a bond with two or more

1 sureties, made payable to the defendant AND conditioned that if the
2 plaintiff fails to prosecute the action with diligence and to effect, ~~that~~
3 the plaintiff will pay all damages sustained by the defendant by reason of
4 the action and all costs incurred ~~therein~~ IN THE ACTION. If the taxpayer
5 prevails in the action, the court shall allow the taxpayer costs and a
6 reasonable attorney fee not to exceed forty ~~per cent~~ PERCENT of the amount
7 recovered or saved to the county.

8 Sec. 3. Section 35-212, Arizona Revised Statutes, is amended to
9 read:

10 35-212. Injunctive and civil remedies; definition

11 A. The attorney general in ~~his~~ THE ATTORNEY GENERAL'S discretion
12 may bring an action in the name of the state to:

13 1. Enjoin the illegal payment of public monies, including
14 violations of section 11-952 and title 41, chapter 23. ~~, or if the monies~~
15 ~~have been paid, to~~

16 2. Recover ~~such~~ ILLEGALLY PAID PUBLIC monies plus twenty ~~per cent~~
17 PERCENT of ~~such~~ THAT amount together with interest and costs, including
18 reasonable attorney fees, to be paid to the state treasurer or other
19 appropriate official, OR, IN THE CASE OF PUBLIC MONIES OF A POLITICAL
20 SUBDIVISION THAT DID NOT ORIGINATE OR WERE NOT RECEIVED FROM THIS STATE,
21 TO THE POLITICAL SUBDIVISION, to the credit of the fund from which the
22 payment was made.

23 B. THE ATTORNEY GENERAL MAY BRING AN ACTION TO RECOVER ILLEGALLY
24 PAID PUBLIC MONIES AGAINST:

25 1. ANY PERSON WHO RECEIVED THE ILLEGAL PAYMENT.

26 2. THE PUBLIC BODY OR THE PUBLIC OFFICER ACTING IN THE OFFICER'S
27 OFFICIAL CAPACITY WHO ORDERED OR CAUSED THE ILLEGAL PAYMENT OR HAS
28 SUPERVISORY AUTHORITY OVER THE PERSON THAT ORDERED OR CAUSED THE ILLEGAL
29 PAYMENT.

30 3. THE PUBLIC OFFICIAL, EMPLOYEE OR AGENT WHO ORDERED OR CAUSED THE
31 ILLEGAL PAYMENT, INCLUDING A PAYMENT ORDERED OR CAUSED TO BE MADE WITHOUT
32 AUTHORIZATION OF LAW.

33 C. A PUBLIC OFFICIAL, EMPLOYEE OR AGENT OF THIS STATE, A POLITICAL
34 SUBDIVISION OF THIS STATE OR A BUDGET UNIT WHO IS CHARGED WITH COLLECTING,
35 RECEIVING, SAFEKEEPING, TRANSFERRING OR DISBURSING PUBLIC MONIES MAY BE
36 HELD PERSONALLY LIABLE FOR AN ILLEGAL PAYMENT OF PUBLIC MONIES, INCLUDING
37 PAYMENT MADE WITHOUT AUTHORIZATION OF LAW.

38 D. A PUBLIC OFFICIAL, EMPLOYEE OR AGENT OF THIS STATE, A POLITICAL
39 SUBDIVISION OF THIS STATE OR A BUDGET UNIT WHO IS RESPONSIBLE FOR
40 DISBURSING, COLLECTING, RECEIVING, SAFEKEEPING OR TRANSFERRING PUBLIC
41 MONIES PURSUANT TO A WARRANT OR OTHER FORM OF CLAIM THAT DOES NOT
42 ORIGINATE FROM THE PUBLIC OFFICIAL, EMPLOYEE OR AGENT MAKING THE DISBURSAL
43 MAY NOT BE HELD PERSONALLY LIABLE FOR ILLEGAL PAYMENTS MADE PURSUANT TO
44 SUCH WARRANTS OR OTHER CLAIMS UNLESS THE PUBLIC OFFICIAL, EMPLOYEE OR
45 AGENT KNEW OR SHOULD HAVE KNOWN THAT A WARRANT OR OTHER CLAIM WOULD RESULT
46 IN AN ILLEGAL PAYMENT OF PUBLIC MONIES.

1 E. AN ACTION BROUGHT PURSUANT TO THIS ARTICLE IS SUBJECT TO TITLE
2 12, CHAPTER 7, ARTICLE 2. IF THE ACTION IS BROUGHT BY THE ATTORNEY
3 GENERAL, THE ACTION MUST BE BROUGHT WITHIN FIVE YEARS AFTER THE DATE AN
4 ILLEGAL PAYMENT WAS ORDERED AND SECTION 12-821.01 DOES NOT APPLY TO THE
5 ACTION.

6 ~~B.~~ F. ~~As used in~~ FOR THE PURPOSES OF this section, "public monies"
7 includes all monies coming into the lawful possession, custody or control
8 of BUDGET UNITS, state agencies, boards, commissions or departments or a
9 state officer, employee or agent in ~~his~~ AN official capacity, AND ALL
10 MONIES COMING INTO THE LAWFUL POSSESSION, CUSTODY OR CONTROL OF A
11 TAX-SUPPORTED POLITICAL SUBDIVISION OR AN OFFICER, EMPLOYEE OR AGENT OF A
12 TAX-SUPPORTED POLITICAL SUBDIVISION IN AN OFFICIAL CAPACITY irrespective
13 of the source from which, or the manner in which, the monies are received.

14 Sec. 4. Section 35-213, Arizona Revised Statutes, is amended to
15 read:

16 35-213. Failure of attorney general to bring action; action
17 by taxpayer; bond; amount of recovery and attorney
18 fees

19 A. AN ACTION TO RECOVER ILLEGALLY PAID PUBLIC MONIES PURSUANT TO
20 SECTION 35-212, SUBSECTION B, PARAGRAPH 1 OR 3 MAY BE BROUGHT ONLY BY THE
21 ATTORNEY GENERAL.

22 ~~A.~~ B. A TAXPAYER OF THIS STATE MAY REQUEST, IN WRITING, THE
23 ATTORNEY GENERAL TO INSTITUTE AN ACTION PURSUANT TO SECTION 35-212. A
24 REQUEST MADE REGARDING A POLITICAL SUBDIVISION MAY BE MADE ONLY BY A
25 TAXPAYER OF THE POLITICAL SUBDIVISION THAT IS THE SUBJECT OF THE REQUEST.
26 A REQUEST MADE REGARDING A COUNTY MAY ONLY BE SUBMITTED TWENTY-ONE DAYS
27 AFTER A REQUEST IS MADE TO THE COUNTY ATTORNEY PURSUANT TO SECTION 11-642.
28 If, for sixty days after THE request made by ~~a~~ THE taxpayer ~~of the state~~
29 in writing, the attorney general fails to institute an action as provided
30 in section 35-212, ~~any~~ THE taxpayer ~~of the state~~ WHO MADE THE REQUEST may
31 institute the action PURSUANT TO SECTION 35-212, SUBSECTION A OR
32 SUBSECTION B, PARAGRAPH 2 in ~~his~~ THE TAXPAYER'S own name and at ~~his~~ THE
33 TAXPAYER'S own cost with the same effect as if brought by the attorney
34 general.

35 ~~B.~~ C. The person instituting the action shall execute a bond
36 payable to the defendant in the action, conditioned that the plaintiff
37 will prosecute the action with diligence and finality ~~or~~ AND will pay all
38 damages sustained by the defendant by reason of the action and all costs
39 incurred ~~therein~~ IN THE ACTION, INCLUDING ATTORNEY FEES AWARDED TO THE
40 DEFENDANT.

41 ~~C.~~ D. ~~If the taxpayer prevails in the action,~~ The court shall
42 ~~allow him~~ MAY AWARD THE PREVAILING PARTY costs and reasonable ~~attorney's~~
43 ATTORNEY fees, not to exceed forty ~~percent~~ PERCENT of the amount SOUGHT
44 TO BE recovered or saved to the state, ~~as the case may be~~ OR POLITICAL
45 SUBDIVISION.

S.B. 1274

APPROVED BY THE GOVERNOR APRIL 17, 2018.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 17, 2018.