

House Engrossed

state personnel board; hearings

State of Arizona
House of Representatives
Fifty-fifth Legislature
First Regular Session
2021

CHAPTER 130

HOUSE BILL 2177

AN ACT

AMENDING SECTIONS 38-532 AND 41-783, ARIZONA REVISED STATUTES; RELATING TO
THE STATE PERSONNEL BOARD.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 38-532, Arizona Revised Statutes, is amended to
3 read:

4 38-532. Prohibited personnel practice; violation;
5 reinstatement; exceptions; civil penalty

6 A. It is a prohibited personnel practice for an employee who has
7 control over personnel actions to take reprisal against an employee for a
8 disclosure of information of a matter of public concern by the employee to
9 a public body that the employee reasonably believes evidences:

10 1. A violation of any law.

11 2. Mismanagement, a gross waste of monies or an abuse of authority.

12 B. The disclosure by an employee to a public body alleging a
13 violation of law, mismanagement, gross waste of monies or abuse of
14 authority shall be in writing and shall contain the following information:

15 1. The date of the disclosure.

16 2. The name of the employee making the disclosure.

17 3. The nature of the alleged violation of law, mismanagement, gross
18 waste of monies or abuse of authority.

19 4. If possible, the date or range of dates on which the alleged
20 violation of law, mismanagement, gross waste of monies or abuse of
21 authority occurred.

22 C. An employee who knowingly commits a prohibited personnel
23 practice shall be ordered by the state personnel board, a community
24 college district governing board, a school district governing board, a
25 city or town personnel board or any other appropriate independent
26 personnel board established or authorized pursuant to section 38-534 to
27 pay a civil penalty of up to ~~five thousand dollars~~ \$5,000 to the state
28 general fund, a county general fund, a community college district
29 unrestricted general fund, a school district maintenance and operation
30 fund or a city or town general fund, whichever is appropriate. The
31 employee who committed the prohibited personnel practice, not the
32 governmental entity, shall pay the civil penalty. On a finding that an
33 employee committed a prohibited personnel practice, the employer shall
34 take appropriate disciplinary action including dismissal, except that on a
35 finding that an employee committed a prohibited personnel practice against
36 an employee who disclosed information that the employee reasonably
37 believed evidenced a violation of any law, the employee who knowingly
38 committed the prohibited personnel practice is subject to a civil penalty
39 of up to ~~ten thousand dollars~~ \$10,000, the employer shall dismiss the
40 employee and the employee is barred from any future employment by the
41 government entity.

42 D. An employee or former employee against whom a prohibited
43 personnel practice is committed may recover attorney fees, costs, back
44 pay, general and special damages and full reinstatement for any reprisal

1 resulting from the prohibited personnel practice as determined by the
2 court.

3 E. An employee does not commit a prohibited personnel practice if
4 he takes reprisal against an employee if that employee discloses
5 information in a manner prohibited by law or the materials or information
6 are prescribed as confidential by law.

7 F. This section may not be used as a defense in a disciplinary
8 action where the employee is being disciplined for cause pursuant to
9 section 41-773, except in a hearing on a complaint brought pursuant to
10 this section by an employee or former employee who believes he has been
11 the subject of a prohibited personnel practice as prescribed in this
12 section as the result of a disclosure of information.

13 G. On request or at any time an employee alleges reprisal, an
14 employer shall provide an employee who is subject to disciplinary or
15 corrective action, suspension, demotion or dismissal with a copy of this
16 section.

17 H. If an employee or former employee believes that a personnel
18 action taken against him is the result of his disclosure of information
19 under this section, he may make a complaint to an appropriate independent
20 personnel board, if one is established or authorized pursuant to section
21 38-534, or to a community college district governing board, school
22 district governing board or city or town council. If an independent
23 personnel board has not been established or authorized, or if a school
24 district governing board, a community college district governing board or
25 a city or town council does not hear and decide personnel matters brought
26 pursuant to this section, the employee or former employee may make a
27 complaint to the state personnel board. A complaint made pursuant to this
28 subsection shall be made within ten ~~WORKING~~ days ~~of~~ AFTER the effective
29 date of the action taken against him. The state personnel board, a school
30 district governing board, a community college district governing board, a
31 city or town council or any other appropriate independent personnel board
32 shall, pursuant to the rules governing appeals under section 41-783, make
33 a determination concerning:

34 1. The validity of the complaint.

35 2. Whether a prohibited personnel practice was committed against
36 the employee or former employee as a result of disclosure of information
37 by the employee or former employee.

38 I. If the state personnel board, a community college district
39 governing board, a school district governing board, a city or town council
40 or any other appropriate independent personnel board established or
41 authorized pursuant to section 38-534 determines that a prohibited
42 personnel practice was committed as a result of disclosure of information
43 by the employee or former employee, it shall rescind the personnel action
44 and order that all lost pay and benefits be returned to the employee or
45 former employee. The employee, former employee, employee alleged to have

1 committed a prohibited personnel practice pursuant to subsection A of this
2 section or employer may appeal the decision of the state personnel board,
3 a community college district governing board, a school district governing
4 board, a city or town council or any other appropriate independent
5 personnel board established or authorized pursuant to section 38-534 to
6 the superior court as provided in title 12, chapter 7, article 6.

7 J. For purposes of a hearing by the state personnel board, a school
8 district governing board, a community college district governing board, a
9 city or town council or any other appropriate independent personnel board
10 conducted under this section, the employee, former employee, employee
11 alleged to have committed the prohibited personnel practice pursuant to
12 subsection A of this section and employer may be represented by
13 counsel. In addition, representation by counsel in such hearings shall
14 meet any other requirements stipulated by the state personnel board, a
15 school district governing board, a community college district governing
16 board, a city or town council or any other appropriate independent
17 personnel board or as required by law.

18 K. An employee or former employee may also seek injunctive relief
19 as is otherwise available in civil actions. A court may award reasonable
20 attorney fees to an employee or former employee who prevails in an action
21 pursuant to this section, but the award of attorney fees shall not exceed
22 ~~ten thousand dollars~~ \$10,000.

23 L. This section shall not be construed to limit or extend the civil
24 or criminal liability of an employee or former employee for any disclosure
25 of information or to limit an employee's right to a separate
26 pretermination hearing with the employee's employer, as provided by law.

27 M. An employee who knowingly makes a false accusation that a public
28 officer or employee who has control over personnel actions has engaged in
29 a violation of any law, mismanagement, a gross waste of monies or an abuse
30 of authority is personally subject to a civil penalty of up to ~~twenty-five~~
31 ~~thousand dollars~~ \$25,000 and dismissal from employment by the employer.

32 Sec. 2. Section 41-783, Arizona Revised Statutes, is amended to
33 read:

34 41-783. Appeals to the state personnel board for covered
35 employees; notice of charges; hearings

36 A. Except as provided by section 41-1830.16, a covered employee who
37 has completed the covered employee's original probationary period of
38 service as provided by the personnel rules may appeal to the state
39 personnel board the covered employee's dismissal from covered service,
40 suspension for more than eighty working hours or involuntary demotion
41 resulting from disciplinary action. The appeal shall be filed not later
42 than ten working days after the effective date of such action. The
43 covered employee shall be furnished with specified charges in writing when
44 the action is taken. Such appeal shall be in writing and must state
45 specific facts relating directly to the charges on which the appeal is

1 based and shall be heard by the state personnel board within ~~thirty~~ SIXTY
2 days after its receipt. The state personnel board shall provide the
3 employing agency with a copy of the appeal not less than twenty days in
4 advance of the hearing.

5 B. Hearings on such appeals shall be open to the public, except in
6 cases where the covered employee requests a confidential hearing, and
7 shall be informal with technical rules of evidence not applying to the
8 proceedings except the rule of privilege recognized by law. Both the
9 covered employee and the employing agency shall be notified of ~~any~~ THE
10 INITIAL hearing ~~or meeting~~ date not less than twenty days in advance of
11 the hearing ~~or~~ AND not less than ten days in advance of a BOARD meeting.
12 ~~and~~ THE COVERED EMPLOYEE AND THE EMPLOYING AGENCY may select
13 representatives of their choosing, present and cross-examine witnesses and
14 give evidence ~~before the state personnel board~~ AT THE HEARING. The state
15 personnel board may appoint a hearing officer to conduct the hearing and
16 take evidence on behalf of the board and exercise the rights prescribed by
17 section 12-2212. The state personnel board shall prepare an official
18 record of the hearing, including all testimony recorded manually or by
19 mechanical device, and exhibits. Either party may request that the record
20 be transcribed. If a party requests that the record be transcribed, an
21 entity, other than the state personnel board, selected by the requesting
22 party shall transcribe the record at the cost of the requesting party. If
23 the disciplinary hearing would involve evidence the state is prevented by
24 law from disclosing, then a confidential hearing upon the state's request
25 shall be granted.

26 C. The state personnel board:

27 1. Shall determine whether the state agency has proven by a
28 preponderance of the evidence the material facts on which the discipline
29 was based. On such a finding, the board shall affirm the decision of the
30 state agency head, unless the disciplinary decision was arbitrary and
31 capricious.

32 2. May recommend modification of a disciplinary action if the
33 agency has not proven by a preponderance of the evidence the material
34 facts on which the discipline was based or if a disciplinary decision is
35 found to be arbitrary and capricious.

36 3. Shall reverse the decision of the state agency head if the board
37 finds that cause did not exist for any discipline to be imposed and, in
38 the case of dismissal or demotion, return the covered employee to the same
39 position the employee held before the dismissal or demotion with or
40 without back pay.

41 D. On a finding that the agency has not proven by a preponderance
42 of the evidence the material facts on which the discipline was based, the
43 board shall identify the material facts that the board found were not
44 supported by a preponderance of the evidence and may recommend a proposed
45 disciplinary action in light of the facts proven. On a finding that the

1 disciplinary decision was arbitrary and capricious, the board shall
2 include the board's reasons for the board's finding and may recommend a
3 proposed disciplinary action in light of the facts proven.

4 E. Within forty-five days after the conclusion of the hearing, the
5 state personnel board shall enter its decision or recommendation and shall
6 at the same time send a copy of the decision or recommendation by
7 certified mail to the employing agency and to the covered employee at the
8 employee's address as given at the hearing or to a representative
9 designated by the covered employee to receive a copy of the decision or
10 recommendation. The agency director or the director's designee shall
11 accept, modify or reverse the board's decision or accept, modify or reject
12 the board's recommendation within fourteen days of receipt of the findings
13 or recommendation from the state personnel board. The decision of the
14 agency director or director's designee is final and binding. The agency
15 director shall send a copy of the agency's final determination to the
16 covered employee pursuant to this section.

17 F. Any party may appeal the decision of the state personnel board
18 or the final decision of the agency pursuant to title 12, chapter 7,
19 article 6 to the superior court in the covered employee's county of
20 residence on one or more of the following grounds that the order was:

21 1. Founded on or contained error of law that shall specifically
22 include error of construction or application of any pertinent rules.

23 2. Unsupported by any evidence as disclosed by the entire record.

24 3. Materially affected by unlawful procedure.

25 4. Based on a violation of any constitutional provision.

26 5. Arbitrary or capricious.

27 G. An appeal shall be available to the court of appeals from the
28 order of the superior court pursuant to title 12, chapter 7, article 6 as
29 in other civil cases.

30 H. A covered employee may represent himself or designate a
31 representative, not necessarily an attorney, before any board hearing or
32 any quasi-judicial hearing held pursuant to this section providing that no
33 fee may be charged for any services rendered in connection with such
34 hearing by any such designated representative who is not an attorney
35 admitted to practice.

APPROVED BY THE GOVERNOR MARCH 26, 2021.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 26, 2021.