

REFERENCE TITLE: attorney general; legislature; legal challenges

State of Arizona
Senate
Fifty-sixth Legislature
First Regular Session
2023

SB 1021

Introduced by
Senator Kavanagh

AN ACT

AMENDING SECTION 41-192, ARIZONA REVISED STATUTES; RELATING TO THE
ATTORNEY GENERAL AND THE DEPARTMENT OF LAW.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 41-192, Arizona Revised Statutes, is amended to
3 read:

4 41-192. Powers and duties of attorney general; restrictions
5 on state agencies as to legal counsel; exceptions;
6 compromise and settlement monies

7 A. The attorney general shall have charge of and direct the
8 department of law and shall serve as chief legal officer of the state.
9 The attorney general shall:

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

12 2. Establish administrative and operational policies and procedures
13 within ~~his~~ THE department.

14 3. Approve long-range plans for developing departmental programs
15 ~~therein~~, and coordinate the legal services required by other departments
16 of this state or other state agencies.

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

20 5. Represent political subdivisions, school districts and
21 municipalities in suits to enforce state or federal statutes pertaining to
22 antitrust, restraint of trade or price-fixing activities or conspiracies,
23 if the attorney general notifies in writing the political subdivisions,
24 school districts and municipalities of the attorney general's intention to
25 bring any such action on their behalf. At any time within thirty days
26 after the notification, a political subdivision, school district or
27 municipality, by formal resolution of its governing body, may withdraw the
28 authority of the attorney general to bring the intended action on its
29 behalf.

30 6. DEFEND ALL LAWS PASSED BY THE LEGISLATURE AND SIGNED BY THE
31 GOVERNOR AGAINST ALL LEGAL CHALLENGES. THE ATTORNEY GENERAL MAY PETITION
32 THE LEGISLATURE FOR RELIEF FROM THIS DUTY AND RELIEF SHALL BE GRANTED IF
33 AT LEAST TWO-THIRDS OF THE MEMBERS OF BOTH THE SENATE JUDICIARY COMMITTEE
34 AND THE HOUSE OF REPRESENTATIVES JUDICIARY COMMITTEE, OR THEIR SUCCESSOR
35 COMMITTEES, VOTE TO GRANT RELIEF.

36 7. Organize the civil rights division within the department of law
37 and administer ~~such~~ THE division pursuant to the powers and duties
38 provided in chapter 9 of this title.

39 8. Compile, publish and distribute to all state agencies,
40 departments, boards, commissions and councils, and to other persons and
41 government entities on request, at least every ten years, the Arizona
42 agency handbook that sets forth and explains the major state laws that
43 govern state agencies, including information on the laws relating to
44 bribery, conflicts of interest, contracting with the government,
45 disclosure of public information, discrimination, nepotism, financial

1 disclosure, gifts and extra compensation, incompatible employment,
2 political activity by employees, public access and misuse of public
3 resources for personal gain. A supplement to the handbook reflecting
4 revisions to the information contained in the handbook shall be compiled
5 and distributed by the attorney general as deemed necessary.

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

7 1. Organize the department into such bureaus, subdivisions or units
8 as he deems most efficient and economical, and consolidate or abolish
9 them.

10 2. Adopt rules for the orderly conduct of the business of the
11 department.

12 3. Subject to chapter 4, article 4 of this title, employ and assign
13 assistant attorneys general and other employees necessary to perform the
14 functions of the department.

15 4. Compromise or settle any action or claim by or against this
16 state or any department, board or agency of this state. If the compromise
17 or settlement involves a particular department, board or agency of this
18 state, the compromise or settlement shall be first approved by the
19 department, board or agency. If ~~the~~ A department or agency is NOT named or
20 otherwise materially involved, the approval of the governor shall be first
21 obtained.

22 5. Charge reasonable fees for distributing official publications,
23 including attorney general legal opinions and the Arizona agency handbook.
24 The fees received shall be transmitted to the state treasurer for deposit
25 in the state general fund.

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

28 D. Notwithstanding any law to the contrary, except as provided in
29 subsections E and F of this section, no state agency other than the
30 attorney general shall employ legal counsel or make an expenditure or
31 incur an indebtedness for legal services, but the following are exempt
32 from this section:

33 1. The director of water resources.

34 2. The residential utility consumer office.

35 3. The industrial commission.

36 4. The Arizona board of regents.

37 5. The auditor general.

38 6. The corporation commissioners and the corporation commission
39 other than the securities division.

40 7. The office of the governor.

41 8. The constitutional defense council.

42 9. The office of the state treasurer.

43 10. The Arizona commerce authority.

44 11. The water infrastructure finance authority of Arizona.

1 E. If the attorney general determines that he is disqualified from
 2 providing judicial or quasi-judicial legal representation or legal
 3 services on behalf of any state agency in relation to any matter, the
 4 attorney general shall give written notification to the state agency
 5 affected. If the agency has received written notification from the
 6 attorney general that the attorney general is disqualified from providing
 7 judicial or quasi-judicial legal representation or legal services in
 8 relation to any particular matter, the state agency is authorized to make
 9 expenditures and incur indebtedness to employ attorneys to provide the
 10 representation or services.

11 F. If the attorney general and the director of the department of
 12 agriculture cannot agree on the final disposition of a pesticide complaint
 13 under section 3-368, if the attorney general and the director determine
 14 that a conflict of interest exists as to any matter or if the attorney
 15 general and the director determine that the attorney general does not have
 16 the expertise or attorneys available to handle a matter, the director is
 17 authorized to make expenditures and incur indebtedness to employ attorneys
 18 to provide representation or services to the department with regard to
 19 that matter.

20 ~~G.~~ G. In any action brought by the attorney general pursuant to
 21 state or federal statutes pertaining to antitrust, restraint of trade, or
 22 price-fixing activities or conspiracies for the recovery of damages by
 23 this state or any of its political subdivisions, school districts or
 24 municipalities, in addition to the attorney general's other powers and
 25 authority, the attorney general on behalf of this state may enter into
 26 contracts relating to the investigation and prosecution of such action
 27 with any other party plaintiff who has brought a similar action for the
 28 recovery of damages and with whom the attorney general finds it
 29 advantageous to act jointly or to share common expenses or to cooperate in
 30 any manner relative to such action. In any such action, notwithstanding
 31 any ~~other laws~~ LAW to the contrary, the attorney general may undertake,
 32 among other things, to render legal services as special counsel or to
 33 obtain the legal services of special counsel from any department or agency
 34 of the United States, of this state or any other state or any department
 35 or agency thereof or any county, city, public corporation or public
 36 district in this state or in any other state that has brought or intends
 37 to bring a similar action for the recovery of damages or its duly
 38 authorized legal representatives in such action.

39 ~~H.~~ H. Any department or agency of this state authorized by law to
 40 maintain a legal division or incur expenses for legal services from funds
 41 derived from sources other than the general revenue of the state, or from
 42 any special or trust fund, shall pay from such source of revenue or
 43 special or trust fund into the general fund of ~~the~~ THIS state, to the
 44 extent such funds are available and on a reimbursable basis for warrants

1 drawn, the amount actually expended by the department of law within
2 legislative appropriations for such legal division or legal services.

3 ~~H.~~ I. Appropriations made pursuant to subsection ~~G~~ H of this
4 section ~~shall~~ ARE not ~~be~~ subject to lapsing provisions otherwise provided
5 by law. Services for departments or agencies to which this subsection and
6 subsection F of this section ~~are applicable~~ APPLY shall be performed by
7 special or regular assistants to the attorney general.

8 ~~I.~~ J. Notwithstanding section 35-148, monies received by the
9 attorney general from charges to state agencies and political subdivisions
10 for legal services relating to interagency service agreements shall be
11 deposited, pursuant to sections 35-146 and 35-147, in an attorney general
12 agency services fund. Monies in the fund are subject to legislative
13 appropriation and are exempt from the provisions of section 35-190
14 relating to lapsing of appropriations.

15 ~~J.~~ K. Unless otherwise provided by law, monies received for and
16 belonging to the state and resulting from compromises and settlements
17 entered into pursuant to subsection B of this section, excluding
18 restitution and reimbursement to state agencies for costs or attorney
19 fees, shall be deposited into the state treasury and credited to the state
20 general fund pursuant to section 35-142. Monies received for and
21 belonging to the state and resulting from a compromise or settlement are
22 not considered custodial, private or quasi-private monies unless
23 specifically provided by law. On or before January 15, April 15, July 15
24 and October 15, the attorney general shall file with the governor, with
25 copies to the director of the department of administration, the president
26 of the senate, the speaker of the house of representatives, the secretary
27 of state and the staff director of the joint legislative budget committee,
28 a full and complete account of the deposits into the state treasury made
29 pursuant to this subsection in the previous calendar quarter. For the
30 purposes of this subsection, "restitution" means monies intended to
31 compensate a specific, identifiable person, including this state, for
32 economic loss.