House Engrossed Senate Bill

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KEN BENNETT
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CHAPTER 99

SENATE BILL 1212

AN ACT

AMENDING SECTIONS 8-344 AND 12-352, ARIZONA REVISED STATUTES; AMENDING TITLE 12, CHAPTER 12, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 12-2108; AMENDING SECTIONS 13-805, 25-510, 32-2188, 32-2193.38, 32-2193.39, 36-3411 AND 38-809, ARIZONA REVISED STATUTES; AMENDING SECTION 38-849, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2010, CHAPTER 118, SECTION 10; REPEALING SECTION 38-849, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2010, CHAPTER 200, SECTION 45; AMENDING SECTIONS 38-897, 38-912 AND 44-1201, ARIZONA REVISED STATUTES; RELATING TO CRIMINAL AND CIVIL ACTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 8-344, Arizona Revised Statutes, is amended to read:

8-344. Restitution payments

A. If a juvenile is adjudicated delinquent, the court, after considering the nature of the offense and the age, physical and mental condition and earning capacity of the juvenile, shall order the juvenile to make full or partial restitution to the victim of the offense for which the juvenile was adjudicated delinquent or to the estate of the victim if the victim has died. The juvenile shall make restitution payments to the clerk of the court for disbursement to the victim or estate of the victim.

B. The court shall notify the victim or estate of the victim of the dispositional hearing. The court may consider a verified statement from the victim or estate of the victim concerning damages for lost wages, reasonable damages for injury to or loss of property and actual expenses of medical treatment for personal injury, excluding pain and suffering.

C. In ordering restitution pursuant to subsection A of this section, the court may order one or both of the juvenile's custodial parents to make restitution to the victim of the offense for which the juvenile was adjudicated delinquent or to the estate of the victim if the victim has died. The court shall determine the amount of restitution ordered pursuant to this subsection, except that the amount shall not exceed the liability limit established pursuant to section 12-661. The court may order a parent or juvenile who is ordered to pay restitution to satisfy the order in a lump sum or installment payments to the clerk of the court for disbursement to the victim or estate of the victim. If the court orders the juvenile's parents to make restitution pursuant to this subsection, the court shall order the juvenile to make either full or partial restitution, regardless of the juvenile's insufficient earning capacity. The court shall not consider the ability of the juvenile's parents to pay restitution before making a restitution order.

D. The juvenile court shall retain jurisdiction of the case after the juvenile attains eighteen years of age for the purpose of modifying the manner in which court ordered payments are to be made. After a juvenile attains eighteen years of age, the juvenile court shall enter the following:

1. A juvenile restitution order in favor of the state for the unpaid balance, if any, of any costs, fees, surcharges or monetary assessments imposed.

2. A juvenile restitution order in favor of each person entitled to restitution for the unpaid balance of any restitution ordered pursuant to this section.

E. The clerk of the court shall send a copy of the juvenile restitution order to each person who is entitled to restitution.

F. A juvenile restitution order may be recorded and enforced as any civil judgment, except that a juvenile restitution order does not require

renewal pursuant to section 12-1611 or 12-1612. A juvenile restitution order does not expire until paid in full. ENFORCEMENT OF A JUVENILE RESTITUTION ORDER BY ANY PERSON WHO IS ENTITLED TO RESTITUTION OR BY THE STATE INCLUDES THE COLLECTION OF INTEREST, WHICH ACCRUES AT A RATE OF TEN PER CENT PER ANNUM.

G. A juvenile restitution order is a criminal penalty for the purposes of a federal bankruptcy involving the juvenile.

Sec. 2. Section 12-352, Arizona Revised Statutes, is amended to read:

12-352. Medical malpractice judgments; payment of interest; definition

A. Notwithstanding any law to the contrary, in a contested action arising out of a medical malpractice claim the court shall award the payment of interest to the prevailing party at a rate that is equal to ~~three~~ ONE percentage ~~points~~ POINT above the federal postjudgment interest rate in effect on the date judgment is entered. Interest shall only accrue from and after the date judgment is entered until the judgment is paid. If the judgment is reversed or otherwise set aside, no interest shall be paid. The rate for calculating interest that accrues from and after the date judgment is entered shall be adjusted on June 30 and December 31 of each year to equal ~~three~~ ONE percentage ~~points~~ POINT above the federal postjudgment interest rate in effect on the date of adjustment until the judgment is paid. The interest rate specified for purposes of this section shall not exceed nine per cent. Interest shall accrue at each adjusted rate only until the next adjustment. The adjusted interest rate shall not be applied to any preceding six-month period.

B. For the purposes of this section, "federal postjudgment INTEREST rate" means the interest rate established for the federal court system pursuant to 28 United States Code section 1961, as amended.

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

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

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

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

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

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

Sec. 4. Section 13-805, Arizona Revised Statutes, is amended to read:

13-805. Jurisdiction

A. The trial court shall retain jurisdiction of the case for purposes of modifying the manner in which court-ordered payments are made until paid in full or until the defendant's sentence expires. At the time the defendant completes the defendant's period of probation or the defendant's sentence, the court shall enter both:

1. A criminal restitution order in favor of the state for the unpaid balance, if any, of any fines, costs, incarceration costs, fees, surcharges or assessments imposed.

2. A criminal restitution order in favor of each person entitled to restitution for the unpaid balance of any restitution ordered.

B. The clerk of the court shall notify each person who is entitled to restitution of the criminal restitution order.

C. A criminal restitution order may be recorded and enforced as any civil judgment, except that a criminal restitution order does not require renewal pursuant to section 12-1611 or 12-1612. Enforcement of a criminal restitution order by any person who is entitled to restitution or by the state includes the collection of interest that accrues ~~pursuant to section 44-1201 in the same manner as any civil judgment~~ AT A RATE OF TEN PER CENT PER ANNUM. A criminal restitution order does not expire until paid in full.

D. A criminal restitution order is a criminal penalty for the purposes of a federal bankruptcy involving the defendant.

Sec. 5. Section 25-510, Arizona Revised Statutes, is amended to read:

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

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

1. Current child support or current court ordered payments for the support of a family when combined with the child support obligation.

2. Current spousal maintenance.

3. The current monthly fee prescribed in subsection D of this section for handling support or spousal maintenance payments.

4. Past due support reduced to judgment and then to associated interest.

5. Past due spousal maintenance reduced to judgment and then to associated interest.

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

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

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

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

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

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

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

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

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

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

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

Sec. 6. Section 32-2188, Arizona Revised Statutes, is amended to read:

32-2188. <u>Statute of limitations; service of summons; application for payment; insufficient monies; definition</u>

A. An action for a judgment that subsequently results in an order for payment from the real estate recovery fund shall not be started later than five years from the accrual of the cause of action.

B. If an aggrieved person commences an action for a judgment that may result in an order for payment from the real estate recovery fund, and the

defendant licensee cannot be served process personally in this state, the summons may be served by the alternative methods of service provided for by the Arizona rules of civil procedure, including service by publication. A judgment that complies with the provisions of this section and that was obtained after service by publication only applies to and is enforceable against the real estate recovery fund. The department may intervene in and defend any such action.

C. An aggrieved person may apply to the department for payment from the real estate recovery fund after the aggrieved person obtains a judgment against a real estate or cemetery broker or salesperson based on the licensee's act, representation, transaction or conduct in violation of this chapter or the rules adopted pursuant to this chapter. The claimant must file the original application, including appendices, within two years after the termination of all proceedings, reviews and appeals connected with the judgment. The commissioner, in the commissioner's sole discretion, may waive the two-year application deadline if the commissioner determines that the waiver best serves the public interest. Delivery of the application must be by personal service or by certified mail, return receipt requested.

D. The application must be within the limitations prescribed in section 32-2186 for the amount unpaid on the judgment that represents the claimant's actual and direct loss on the transaction.

E. The department shall prescribe and supply an application form that includes detailed instructions with respect to documentary evidence, pleadings, court rulings, the products of discovery in the underlying litigation and notice requirements to the judgment debtor under section 32-2188.01. The claimant must submit the claim on an application form supplied by the department. The application must include:

1. The claimant's name and address.

2. If the claimant is represented by an attorney, the attorney's name, business address and telephone number.

3. The judgment debtor's name and address or, if unknown, the names and addresses of persons who may know the judgment debtor's present location.

4. A detailed narrative statement of the facts explaining the allegations of the complaint on which the underlying judgment is based, with a copy of the contracts, receipts and other documents from the transaction, the last amended complaint, all existing recorded judgments, documentation of actual and direct out-of-pocket losses and any offsetting payment received and all collection efforts attempted.

5. The identification of the judgment, the amount of the claim and an explanation of its computation, including an itemized list of actual and compensatory damages awarded and claimed.

6. For the purpose of an application that is not based on a criminal restitution order, a statement by the claimant, signed under penalty of perjury, that the complaint on which the underlying judgment is based was prosecuted conscientiously and in good faith. For the purposes of this

paragraph, "conscientiously and in good faith" means that all of the following apply:

(a) No party that was potentially liable to the claimant in the underlying transaction was intentionally and without good cause omitted from the complaint.

(b) No party named in the complaint who otherwise reasonably appeared capable of responding in damages was intentionally and without good cause dismissed from the complaint.

(c) The claimant employed no other procedural means contrary to the diligent prosecution of the complaint in order to seek to qualify for the recovery fund.

7. For the purpose of an application that is based on a criminal restitution order, all of the following statements by the claimant, signed under penalty of perjury:

(a) The claimant has not intentionally and without good cause failed to pursue any person potentially liable to the claimant in the underlying transaction other than a defendant who is the subject of a criminal restitution order.

(b) The claimant has not intentionally and without good cause failed to pursue in a civil action for damages all persons potentially liable to the claimant in the underlying transaction who otherwise reasonably appeared capable of responding in damages other than a defendant who is the subject of a criminal restitution order.

(c) The claimant employed no other procedural means contrary to the diligent prosecution of the complaint in order to seek to qualify for the recovery fund.

8. The following statements, signed under penalty of perjury, and information from the claimant:

(a) The claimant is not a spouse of the judgment debtor or a personal representative of the spouse.

(b) The claimant has complied with all of the requirements of this article.

(c) The judgment underlying the claim meets the requirements of this article.

(d) The claimant has recorded a certified copy of the superior court judgment or transcript of judgment pursuant to sections 33-961 and 33-962 in the county where the judgment was obtained and in the ~~county~~ COUNTIES where all judgment debtors reside and has provided a copy of the recorded judgment to the commissioner.

(e) The claimant has caused the judgment debtor to make discovery under oath, pursuant to section 12-1631, concerning the debtor's property.

(f) The claimant has caused a writ of execution to be issued on the judgment and the officer executing the writ has made a return showing either:

(i) That no personal or real property of the judgment debtor liable to be levied on in satisfaction of the judgment could be found, sold or applied.

(ii) That the amount realized on the sale of the property, or as much of the property that was found, under the execution was insufficient to satisfy the judgment.

(g) The claimant has caused a writ of garnishment to be issued to each known employer of the judgment debtor ascertained by the claimant, that each garnishee-defendant has complied with the respective writ and any judgment or order resulting from the writ and that the amount realized from all judgments against the garnishee-defendants was insufficient to satisfy the balance due on the judgment.

(h) The claimant has deducted the following amounts from the actual or compensatory damages awarded by the court:

(i) Any amount recovered or anticipated from the judgment debtor or debtors.

(ii) Any amount recovered through collection efforts undertaken pursuant to subdivisions (d) through (g) of this paragraph and including an itemized valuation of the assets discovered and amounts applied.

(iii) Any amount recovered or anticipated from bonding, insurance or title companies, including recovery of punitive damages.

(iv) Any amount recovered or anticipated from in-court or out-of-court settlements.

(v) Any amount of tax benefits accrued or taken as deductions on federal, state or local income tax returns.

F. If the claim is based on a judgment against a salesperson or broker and the claimant has not obtained a judgment against the salesperson's or broker's employing broker, if any, or has not diligently pursued the assets of the employing broker, the department shall deny the claim for failure to diligently pursue the assets of all other persons liable to the claimant in the transaction unless the claimant demonstrates, by clear and convincing evidence, that either:

1. The salesperson or broker was not employed by a broker at the time of the transaction.

2. The salesperson's or broker's employing broker would not have been liable to the claimant because the salesperson or broker acted outside the scope of employment in the transaction.

G. The commissioner, at the commissioner's sole discretion, may waive compliance with one or more of the requirements enumerated in subsection E, paragraph 8 or subsection F of this section if the claim is based on an award pursuant to a criminal restitution order or if the commissioner is satisfied that the claimant has taken all reasonable steps to collect the amount of the judgment or the unsatisfied part of the judgment from all judgment debtors but has been unable to collect.

H. If the commissioner finds it is likely that the total remaining liability of the recovery fund is insufficient to pay in full the valid claims of all aggrieved persons who may have claims against any one licensee, the commissioner may petition the court to initiate a proration proceeding. The court shall grant the petition and order a hearing to distribute the total remaining liability of the fund among the applicants in the ratio that their respective claims bear to the aggregate of the valid claims or in such other manner as the court deems equitable. The commissioner or any party may file a proposed plan for equitable distribution of the available monies. The distribution of monies shall be among the persons entitled to share them, without regard to the order of priority in which their respective judgments may have been obtained or their respective applications may have been filed. The court may require all applicants and prospective applicants against one licensee to be joined in one action, to the end that the respective rights of all the applicants to the recovery fund may be equitably adjudicated and settled. The court shall not include in the claims for proration the claim of any person who has not, within ninety days after the court has entered the order for proration, filed a complaint with the court, served the licensee and provided written notice of the claim to the commissioner. The liability of the fund on any application affected by a proration proceeding is based on the limits in effect on the date when the last application for payment is filed. The court may refuse to consider or award prorated recovery to any person who fails to expeditiously prosecute a claim against the licensee or promptly file an application for payment and submit supporting documentation as required by this article.

I. If the commissioner pays from the real estate recovery fund any amount in settlement of an applicant's claim or toward satisfaction of a judgment against a licensed broker, designated broker for a corporation or salesperson, the license of the broker, designated broker for a corporation or salesperson shall be automatically terminated upon the issuance of an order authorizing payment from the real estate recovery fund. A broker, designated broker for a corporation or salesperson is not eligible to receive a new license until the licensee has repaid in full, plus interest at the rate provided by section 44-1201~~, subsection A~~, the amount paid from the real estate recovery fund on the licensee's account and has provided evidence to the commissioner that the judgment has been fully satisfied.

J. If, at any time, the money deposited in the real estate recovery fund is insufficient to satisfy any duly authorized claim or portion of a claim, the commissioner shall, when sufficient money has been deposited in the real estate recovery fund, satisfy the unpaid claims or portions of claims, in the order that the claims or portions of claims were originally filed, plus accumulated interest at the rate of four per cent a year.

K. For the purposes of this section, "complaint" means the facts of the transaction on which the judgment is based.

Sec. 7. Section 32-2193.38, Arizona Revised Statutes, is amended to read:

32-2193.38. Final decision and order on claim; notice

A. The commissioner shall make a final written decision and order on a claim within ninety calendar days after the date the commissioner receives a completed application except in the following cases:

1. A proration hearing is pending under section 32-2193.34, subsection G.

2. An application is deficient or fails to comply substantially with the requirements of section 32-2193.34 or rules adopted pursuant to this article as determined pursuant to section 32-2193.36. The ninety day time period begins under this subsection on the date the department receives an application that is substantially complete.

3. The claimant agrees in writing to extend the time for making a decision.

B. If the commissioner fails to render a written decision and order on a claim within ninety calendar days or within an extended period of time provided under subsection A of this section, the claim is considered to be approved on the day following the final day for rendering the decision.

C. The commissioner shall give notice of a decision and order with respect to the claim to the claimant and to any judgment debtor who has filed a timely response to the claim pursuant to section 32-2193.35 as follows:

1. If the commissioner denies the application, the notice shall state that:

> The claimant's application has been denied and the claimant may pursue the application in court pursuant to section 32-2193.39, Arizona Revised Statutes.

2. If the commissioner approves a payment to the claimant from the condominium recovery fund, the commissioner shall give notice of the decision to the judgment debtor with a copy of the decision and order and shall advise the subdivider that the subdivider's public report will be automatically suspended, pending repayment to the fund, plus interest at the rate provided by section 44-1201~~, subsection A~~. This notice shall describe the subdivider's right to appeal the determination, if any, and shall state that failure by the judgment debtor to timely file a response constitutes a waiver of objection.

Sec. 8. Section 32-2193.39, Arizona Revised Statutes, is amended to read:

32-2193.39. Claimant's right to appeal denial of claim; service of notice of appeal; response; failure to file response

A. A claimant whose application is denied pursuant to section 32-2193.38 may file, within six months after receiving notice of a denial of the claim, a verified application in the court in which judgment was entered in the claimant's favor for an order directing payment from the condominium

recovery fund based on the grounds set forth in the claimant's application to the commissioner.

B. The claimant shall serve a copy of the verified application on the commissioner and on the judgment debtor and shall file a certificate or affidavit of service with the court. Service on the commissioner shall be made by certified mail addressed to the commissioner. Service on a judgment debtor shall be made pursuant to section 32-2193.35 and shall include notice that an application has been filed with the court for a claim against the condominium recovery fund that was previously denied by the commissioner.

C. The commissioner shall advise the subdivider that, if payment is awarded, the subdivider's public report will be automatically suspended, pending repayment to the fund, plus interest at the rate provided by section 44-1201~~, subsection A~~. The commissioner shall include a description of the subdivider's right to appear and defend the action and that failure by the judgment debtor to timely file a response constitutes a waiver of objection.

D. The commissioner and the judgment debtor each must file a written response within thirty calendar days after being served with the application pursuant to subsection B of this section. The court shall set the matter for hearing on the petition of the claimant. The court may grant a request of the commissioner for a continuance of up to thirty calendar days and, on a showing of good cause by any party, may continue the hearing for a time that the court considers appropriate.

E. At the hearing, the claimant must establish compliance with the requirements of section 32-2193.34.

F. If the judgment debtor fails to file a written response to the application, the commissioner may compromise or settle the claim at any time during the court proceedings and, on joint petition of the applicant and the commissioner, the court shall issue an order directing payment from the condominium recovery fund.

Sec. 9. Section 36-3411, Arizona Revised Statutes, is amended to read:

36-3411. <u>Behavioral health services; timely reimbursement; penalties</u>

A. The division shall ensure that behavioral health service providers are reimbursed within ninety days after the service provider submits a clean claim to a regional behavioral health authority.

B. Any contract issued by or on behalf of the division for the provision of behavioral health services shall include language outlining provisions for penalties for noncompliance with contract requirements.

C. If the regional behavioral health authority does not reimburse a provider as required by this section, the director shall subject the regional behavioral health authority to the penalty provisions prescribed in the contract which shall not exceed the interest charges prescribed in section 44-1201~~, subsection A~~. The director shall impose any financial penalties levied upon the regional behavioral health authority through a reduction in

1 the amount of funds payable to the regional behavioral health authority for
2 administrative expenses.
3 D. The ninety day deadline imposed by this section is suspended while
4 a formal grievance regarding the legitimacy of a claim is pending.
5 E. The department or a regional behavioral health authority shall not
6 pay claims for covered services that are initially submitted more than nine
7 months after the date of the services for which payment is claimed or that
8 are submitted as clean claims more than twelve months after the date of
9 service for which payment is claimed. A person dissatisfied with the denial
10 of a claim by the department or by the regional behavioral health authority
11 has twelve months from the date of the service for which payment is claimed
12 to institute a grievance against the department or regional behavioral health
13 authority.
14 F. For claims paid by the department, either directly or through a
15 third party payor, the director may impose a penalty on a regional behavioral
16 health authority or a service provider who submits a claim to the department
17 for payment more than one time after the same claim had been previously
18 denied by the department without having attempted to address the reason given
19 for the denial. The penalty imposed by the director shall not exceed the
20 average cost incurred by the department for processing a claim and shall be
21 levied upon the regional behavioral health authority or service provider
22 through reducing any future payment or payments until the amount of the
23 penalty has been paid.
24 G. This section does not apply to services provided by a hospital
25 pursuant to section 36-2903.01, subsection G or H, or section 36-2904,
26 subsection H or I.
27 Sec. 10. Section 38-809, Arizona Revised Statutes, is amended to read:
28 38-809. Correction of pension payment errors; assignments
29 prohibited; civil liability; restitution or payment
30 of fine; violation; classification; offset of
31 benefits
32 A. If the plan has made pension payments based on incorrect
33 information and a person or an estate has been paid more or less than the
34 person or estate should have been paid, the board shall adjust future
35 payments so that the proper amount is paid. The adjustment may be made in
36 such a manner that the equivalent actuarial present value of the benefit to
37 which the person or estate is correctly entitled is paid.
38 B. Notwithstanding any other statute, benefits, member contributions
39 or court fees including interest earnings and all other credits payable under
40 the plan are not subject in any manner to anticipation, alienation, sale,
41 transfer, assignment, pledge, encumbrance, charge, garnishment, execution or
42 levy of any kind, either voluntary or involuntary, before actually being
43 received by the person entitled to the benefit, contribution, earning or
44 credit under the terms of the plan, and any attempt to dispose of any right
45 under the terms of the plan as proscribed in this subsection is void. The

fund is not liable for or subject to the debts, contracts, liabilities, enlargements or torts of any person entitled to a benefit, contribution, earning or credit under the terms of the plan.

C. Nothing in this section exempts employee benefits of any kind from a writ of attachment, a writ of execution, a writ of garnishment and orders of assignment issued by a court of record as the result of a judgment for arrearages of child support or for child support debt.

D. A person who defrauds the plan or who takes, converts, steals or embezzles monies owned by or from the plan and who fails or refuses to return the monies to the plan on the board's written request is subject to a civil suit by the plan in the superior court in Maricopa county. On entry of an order finding the person has defrauded the plan or taken, converted, stolen or embezzled monies owned by or from the plan, the court shall enter an order against that person and for the plan awarding the plan all of its costs and expenses of any kind, including attorney fees, that were necessary to successfully prosecute the action. The court shall also grant the plan a judicial lien on all of the nonexempt property of the person against whom judgment is entered pursuant to this subsection in an amount equal to all amounts awarded to the plan, plus interest at the rate prescribed by section 44-1201~~, subsection A~~, until all amounts owed are paid to the plan.

E. If a member is convicted of, or discharged because of, theft, embezzlement, fraud or misappropriation of an employer's property or property under the control of the employer, the member is subject to restitution and fines imposed by a court of competent jurisdiction. The court may order the restitution or fines to be paid from any payments otherwise payable to the member from the plan.

F. A person who knowingly makes any false statement or who falsifies or permits to be falsified any record of the plan with an intent to defraud the plan is guilty of a class 1 misdemeanor. If any change or error in the records results in any member or beneficiary receiving from the plan more or less than the member or beneficiary would have been entitled to receive had the records been correct, the plan shall correct the error, and as far as practicable shall adjust the payments in such a manner that the actuarial equivalent of the benefit to which the member or beneficiary was correctly entitled to receive shall be paid. If a member is convicted of a crime pursuant to this subsection, the member is entitled to receive a lump sum payment of the member's accumulated contributions but forfeits any future compensation and benefits that would otherwise accrue to the member or the member's estate under this article.

G. Notwithstanding any other provision of this article, the board may offset against any benefits otherwise payable by the plan to an active or retired member or survivor any court ordered amounts awarded to the board and plan and assessed against the member or survivor.

Sec. 11. Section 38-849, Arizona Revised Statutes, as amended by Laws 2010, chapter 118, section 10, is amended to read:

38-849. Limitations on receiving pension; violation; classification; reemployment after severance; reinstatement of service credits; reemployment of retired or disabled member

A. If a member is convicted of, or discharged because of, theft, embezzlement, fraud or misappropriation of an employer's property or property under the control of the employer, the member shall be subject to restitution and fines imposed by a court of competent jurisdiction. The court may order the restitution or fines to be paid from any payments otherwise payable to the member from the retirement system.

B. A person who knowingly makes any false statement or who falsifies or permits to be falsified any record of the system with an intent to defraud the system is guilty of a class 6 felony. If any change or error in the records results in any member or beneficiary receiving from the system more or less than the member or beneficiary would have been entitled to receive had the records been correct, the local board shall correct such error, and as far as practicable shall adjust the payments in such manner that the actuarial equivalent of the benefit to which such member or beneficiary was correctly entitled shall be paid. If a member is convicted of a crime specified in this subsection the member shall be entitled to receive a lump sum payment of the member's accumulated contributions but forfeits any future compensation and benefits that would otherwise accrue to the member or the member's estate under this article.

C. If a member who received a severance refund on termination of employment, as provided in section 38-846.02, is subsequently reemployed by an employer, the member's prior service credits shall be cancelled and service shall be credited only from the date the member's most recent reemployment period commenced. However, if the former member's reemployment with the same employer occurred within two years after the former member's termination date, and, within ninety days after reemployment the former member signs a written election consenting to reimburse the fund within one year, the former member shall be required to redeposit the amount withdrawn at the time of the former member's separation from service, with interest thereon at the rate of nine per cent for each year compounded each year from the date of withdrawal to the date of repayment. On satisfaction of this obligation the member's prior service credits shall be reinstated.

D. If a retired member becomes employed in any capacity by the employer from which the member retired before sixty consecutive days after the member's date of retirement, the system shall not make pension payments to the retired member during the period of reemployment. If a retired member is reemployed by an employer, no contributions shall be made on the retired member's account, nor any service credited, during the period of the reemployment. Notwithstanding this subsection, if a retired member

subsequently becomes employed in the same position by the employer from which the member retired, the system shall not make pension payments to the retired member during the period of reemployment. On subsequent termination of employment by the retired member, the retired member is entitled to receive a pension based on the member's service and compensation before the date of the member's reemployment. If a member who retired under disability is reemployed by an employer as an employee, that member shall be treated as if the member had been on an uncompensated leave of absence during the period of the member's disability retirement and shall be a contributing member of the system. Within ten days after a retired member is reemployed by the employer from which the member retired, the employer shall advise the ~~fund manager~~ BOARD in writing as to whether the retired member has been reemployed in the same position from which the member retired. The ~~fund manager~~ BOARD shall review all reemployment determinations. If the ~~fund manager~~ BOARD is not provided the necessary information to make a reemployment determination, the ~~fund manager~~ BOARD shall suspend pension payments until information is received and a determination is made that the reemployment meets the requirements of this subsection. For the purposes of this subsection, "same position" means the member is in a position where the member performs substantially similar duties that were performed and exercises substantially similar authority that was exercised by the retired member before retirement.

E. A person who defrauds the system or who takes, converts, steals or embezzles monies owned by or from the system and who fails or refuses to return the monies to the system on the ~~fund manager's~~ BOARD'S written request is subject to civil suit by the system in the superior court in Maricopa county. On entry of an order finding the person has defrauded the system or taken, converted, stolen or embezzled monies owned by or from the system, the court shall enter an order against that person and for the system awarding the system all of its costs and expenses of any kind, including attorney fees, that were necessary to successfully prosecute the action. The court shall also grant the system a judicial lien on all of the nonexempt property of the person against whom judgment is entered pursuant to this subsection in an amount equal to all amounts awarded to the system, plus interest at the rate prescribed by section 44-1201~~, subsection A~~, until all amounts owed are paid to the system.

F. Notwithstanding any other provision of this article, the ~~fund manager~~ BOARD may offset against any benefits otherwise payable by the system to an active or retired member or survivor any court ordered amounts awarded to the ~~fund manager~~ BOARD and system and assessed against the member or survivor.

Sec. 12. Repeal

Section 38-849, Arizona Revised Statutes, as amended by Laws 2010, chapter 200, section 45, is repealed.

Sec. 13. Section 38-897, Arizona Revised Statutes, is amended to read:

38-897. Assignments prohibited; liability of fund

A. The right of an individual to a pension, to a refund of accumulated member contributions, to the pension itself or to any other right accrued or accruing to any individual, and the monies and assets of the retirement plan, are not subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency law or other process of law except a qualified domestic relations order and are unassignable except as may be otherwise specifically provided.

B. Any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge or otherwise dispose of any right provided in subsection A is void. The fund is not liable in any manner for or subject to the debts, contracts, liabilities, engagements or torts of any person entitled to these rights.

C. This section does not exempt employee benefits of any kind from a writ of attachment, a writ of execution, a writ of garnishment and orders of assignment issued by a court of record as the result of a judgment for arrearages of child support or for child support debt.

D. A person who defrauds the plan or who takes, converts, steals or embezzles monies owned by or from the plan and who fails or refuses to return the monies to the plan on the board's written request is subject to civil suit by the plan in the superior court in Maricopa county. On entry of an order finding the person has defrauded the plan or taken, converted, stolen or embezzled monies owned by or from the plan, the court shall enter an order against that person and for the plan awarding the plan all of its costs and expenses of any kind, including attorney fees, that were necessary to successfully prosecute the action. The court shall also grant the plan a judicial lien on all of the nonexempt property of the person against whom judgment is entered pursuant to this subsection in an amount equal to all amounts awarded to the plan, plus interest at the rate prescribed by section 44-1201~~, subsection A~~, until all amounts owed are paid to the plan.

E. Notwithstanding any other provision of this article, the board may offset against any benefits otherwise payable by the plan to an active or retired member or survivor any court ordered amounts awarded to the board and plan and assessed against the member or survivor.

Sec. 14. Section 38-912, Arizona Revised Statutes, is amended to read:

38-912. Civil liability; restitution or payment of fine; violation; classification; offset of benefits

A. A person who defrauds the plan or who takes, converts, steals or embezzles monies owned by or from the plan and who fails or refuses to return the monies to the plan on the board's written request is subject to civil suit by the plan in the superior court in Maricopa county. On entry of an order finding the person has defrauded the plan or taken, converted, stolen or embezzled monies owned by or from the plan, the court shall enter an order against that person and for the plan awarding the plan all of its costs and

expenses of any kind, including attorney fees, that were necessary to successfully prosecute the action. The court shall also grant the plan a judicial lien on all of the nonexempt property of the person against whom judgment is entered pursuant to this subsection in an amount equal to all amounts awarded to the plan, plus interest at the rate prescribed by section 44-1201~~, subsection A~~, until all amounts owed are paid to the plan.

B. If a member is convicted of, or discharged because of, theft, embezzlement, fraud or misappropriation of an employer's property or property under the control of the employer, the member is subject to restitution and fines imposed by a court of competent jurisdiction. The court may order the restitution or fines to be paid from any payments otherwise payable to the member from the plan.

C. A person who knowingly makes any false statement or who falsifies or permits to be falsified any record of the plan with an intent to defraud the plan is guilty of a class 6 felony. If any change or error in the records results in any member or beneficiary receiving from the plan more or less than the member or beneficiary would have been entitled to receive had the records been correct, the local board shall correct the error, and as far as practicable shall adjust the payments in a manner that the actuarial equivalent of the benefit to which the member or beneficiary was correctly entitled shall be paid. If a member is convicted of a crime pursuant to this subsection the member is entitled to receive a lump sum payment of the member's accumulated contributions but forfeits any future compensation and benefits that would otherwise accrue to the member or the member's estate under this article.

D. Notwithstanding any other provision of this article, the board may offset against any benefits otherwise payable by the plan to a member or survivor any court ordered amounts awarded to the board and plan and assessed against the member or survivor.

Sec. 15. Section 44-1201, Arizona Revised Statutes, is amended to read:

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

A. Interest on any loan, indebtedness~~, judgment~~ or other obligation shall be at the rate of ten per cent per annum, unless a different rate is contracted for in writing, in which event any rate of interest may be agreed to. INTEREST ON ANY JUDGMENT THAT IS BASED ON A WRITTEN AGREEMENT EVIDENCING A LOAN, INDEBTEDNESS OR OBLIGATION THAT BEARS A RATE OF INTEREST NOT IN EXCESS OF THE MAXIMUM PERMITTED BY LAW SHALL BE AT THE RATE OF INTEREST PROVIDED IN THE AGREEMENT AND SHALL BE SPECIFIED IN THE JUDGMENT.

B. UNLESS SPECIFICALLY PROVIDED FOR IN STATUTE OR A DIFFERENT RATE IS CONTRACTED FOR IN WRITING, INTEREST ON ANY JUDGMENT SHALL BE AT THE LESSER OF TEN PER CENT PER ANNUM OR AT A RATE PER ANNUM THAT IS EQUAL TO ONE PER CENT PLUS THE PRIME RATE AS PUBLISHED BY THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM IN STATISTICAL RELEASE H.15 OR ANY PUBLICATION THAT MAY

SUPERSEDE IT ON THE DATE THAT THE JUDGMENT IS ENTERED. THE JUDGMENT SHALL STATE THE APPLICABLE INTEREST RATE AND IT SHALL NOT CHANGE AFTER IT IS ENTERED.

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

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

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

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

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

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

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

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

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

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

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

Sec. 16. Findings and purpose

The legislature finds that:

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

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

3. The existence of an overly large appeal bond infringes on the due process rights of appellants. Under such a system, defendants who are subject to overly large damage awards may simply be unable to post a bond to protect their assets and assert their appeal rights. They may be forced into bankruptcy or compelled to settle their case, thereby rendering the right to appeal nearly meaningless.

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

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

Sec. 17. Applicability

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

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

APPROVED BY THE GOVERNOR APRIL 13, 2011.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 13, 2011.

Passed the House April 4, 2011,

by the following vote: 42 Ayes,

17 Nays, 1 Not Voting

Speaker of the House

Cheryl Laube

Chief Clerk of the House

Passed the Senate February 17, 2011,

by the following vote: 22 Ayes,

3 Nays, 1 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR
This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20_____,

at _____ o'clock _____ M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary of State

S.B. 1212

SENATE CONCURS IN HOUSE
AMENDMENTS AND FINAL PASSAGE

Passed the Senate April 7, 20 11

by the following vote: 18 Ayes,

10 Nays, 2 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

7 day of April, 20 11

at 4:45 o'clock P. M.

Secretary to the Governor

Approved this 13th day of

April

at 10:03 o'clock A. M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 13th day of April, 20 11

at 4:59 o'clock P M.

Secretary of State

S.B. 1212