

1 State of Arkansas *As Engrossed: S1/12/17 S1/18/17*

2 91st General Assembly

A Bill

3 Regular Session, 2017

SENATE BILL 34

4

5 By: Senator Hickey

6 *By: Representative Hammer*

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For An Act To Be Entitled

9 AN ACT TO ESTABLISH THE "PUBLIC OFFICER AND EMPLOYEE
10 INTEGRITY ACT OF 2017"; TO CREATE A SPECIAL REVENUE
11 FUND; TO DECLARE AN EMERGENCY; AND FOR OTHER
12 PURPOSES.

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14

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Subtitle

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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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24 SECTION 1. Arkansas Code § 19-6-301, concerning the enumeration of
25 special revenues, is amended to add an additional subdivision to read as
26 follows:

27 (255) Money damages, interest, costs, and attorney's fees, §§
28 21-1-805 and 21-1-806.

29

30 SECTION 2. Arkansas Code Title 19, Chapter 6, Subchapter 8, is amended
31 to add a new section to read as follows:

32 19-6-832. Public Officer and Employee Integrity Enforcement Fund.

33 (a) There is created on the books of the Treasurer of State, the
34 Auditor of State, and the Chief Fiscal Officer of the State a special revenue
35 fund to be known as the "Public Officer and Employee Integrity Enforcement
36 Fund".



1 (b) The fund shall consist of such funds as may be provided by the
2 General Assembly or as deposited by the Attorney General as required by §§
3 21-1-805 and 21-1-806.

4 (c)(1) The fund shall be used by the Attorney General upon approval of
5 the Legislative Council to reimburse litigation expenses incurred under the
6 Public Officer and Employee Integrity Act of 2017, § 21-1-801 et seq.

7 (2)(A) The Attorney General may ask the Legislative Council for
8 reimbursement of litigation expenses under this section after a showing that
9 an investigation was conducted or a lawsuit was filed under the Public
10 Officer and Employee Integrity Act of 2017, § 21-1-801 et seq.

11 (B) Litigation expenses submitted for reimbursement to the
12 Legislative Council under this section shall be itemized.

13 (d) The Legislative Council may approve some or all of the litigation
14 expenses requested for reimbursement by the Attorney General under this
15 section.

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17 SECTION 3. Arkansas Code Title 21, Chapter 1, is amended to add a new
18 subchapter to read as follows:

19
20 Subchapter 8 – Public Officer and Employee Integrity Act of 2017

21
22 21-1-801. Title.

23 This subchapter shall be known and may be cited as the "Public Officer
24 and Employee Integrity Act of 2017".

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26 21-1-802. Legislative intent.

27 It is the intent of the General Assembly to create a civil cause of
28 action that may be used by the Attorney General to protect the public and to
29 promote and maintain the integrity of local and state agencies against
30 malfeasance and illegal conduct by public officers and employees.

31
32 21-1-803. Definitions.

33 As used in this subchapter:

34 (1) "Illegal conduct" means conduct for which a sentence to a term of
35 imprisonment or to a fine, or both, is authorized by statute;

36 (2) "Local or state agency" means:

1 (A)(i) A constitutional office or constitutional officer.

2 (ii) As used in this subdivision (2)(A):

3 (a) "Constitutional office" means an office
4 created by the Arkansas Constitution; and

5 (b) "Constitutional officer" means a person
6 holding a constitutional office;

7 (B) Any of the following state or local entities:

8 (i) A department;

9 (ii) An institution of higher education;

10 (iii) A board;

11 (iv) A commission;

12 (v) An agency;

13 (vi) A quasi-public organization;

14 (vii) An office;

15 (viii) An instrumentality;

16 (ix) A county or county entity;

17 (x) A municipality or municipal entity;

18 (xi) A school or school district;

19 (xii) A regional quasi-public entity such as an economic
20 or planning and development district or school educational co-op that
21 functions in a public manner; or

22 (xiii) A district; or

23 (C) An entity that receives state funding;

24 (3) "Malfeasance" means a disregard or violation of the official
25 duties of a public officer or employee acting in a capacity directly or
26 indirectly related to the public officer's or employee's tenure in,
27 appointment to, or employment with a local or state agency; and

28 (4) "Public officer or employee" means an officer, employee, or
29 volunteer of a local or state agency.

30
31 21-1-804. Civil cause of action created.

32 (a) The Attorney General may bring a lawsuit for money damages,
33 specific performance, and injunctive relief against a public officer or
34 employee under this subchapter if substantial compliance with the following
35 conditions is met:

36 (1) Arkansas Legislative Audit has identified an occurrence of

1 malfeasance or illegal conduct alleged to have been committed by a public
2 officer or employee;

3 (2) A written finding of fact is produced by Arkansas
4 Legislative Audit and delivered via registered United States mail to the
5 public officer or employee at the public officer's or employee's place of
6 employment or to his or her legal representative listing the allegations of
7 malfeasance or illegal conduct;

8 (3)(A) An invitation to appear before the Legislative Joint
9 Auditing Committee has been delivered to the public officer or employee via
10 registered United States mail to the public officer's or employee's place of
11 employment to answer the allegations of malfeasance or illegal conduct.

12 (B)(i) An invitation to appear before the Legislative
13 Joint Auditing Committee as required under this subdivision (a)(3) may
14 instead be accomplished by the use and valid service of a subpoena.

15 (ii) The subpoena may be issued by the Legislative
16 Auditor or by the Legislative Joint Auditing Committee;

17 (4)(A) The public officer or employee has:

18 (i) Appeared before the Legislative Joint Auditing
19 Committee; or

20 (ii) Declined or has failed to appear before the
21 Legislative Joint Auditing Committee.

22 (B)(i) The public officer or employee may appear before
23 the Legislative Joint Auditing Committee with his or her legal
24 representative.

25 (ii) However, the legal representative of the public
26 officer or employee may be present only to offer advice to the public officer
27 or employee and may not speak on the behalf of the public officer or employee
28 unless authorized by the presiding Cochair of the Legislative Joint Auditing
29 Committee;

30 (5) The Legislative Joint Auditing Committee has affirmatively
31 voted to request that the public officer or employee resign from his or her
32 position as a public officer or employee;

33 (6)(A) When it has been alleged that the public officer or
34 employee has stolen, illegally expended, improperly used, or mishandled money
35 or public funds or public property, the Legislative Joint Auditing Committee
36 has affirmatively voted to request that the public officer or employee repay

1 or reimburse the local or state agency the:

2 (i) Amount of money or public funds that was alleged
3 to have been stolen, illegally expended, improperly used, or mishandled; or

4 (ii) Value of the public property that was alleged
5 to have been stolen, illegally expended, improperly used, or mishandled.

6 (B) The Legislative Joint Auditing Committee may
7 subsequently amend the amounts alleged to have been stolen, illegally
8 expended, improperly used, or mishandled under subdivision (a)(6)(A) of this
9 section if new evidence comes to light that the alleged amounts were either
10 less than or more than originally alleged; and

11 (7) The Legislative Joint Auditing Committee has under its own
12 rules affirmatively voted or determined that the matter be referred to the
13 Attorney General for commencement of an action under this subchapter.

14 (b) A lawsuit under this subchapter may be filed against a public
15 officer or employee under his or her official capacity or his or her personal
16 capacity, or both.

17 (c)(1)(A) The limitations period for a lawsuit filed under this
18 subchapter is seven (7) years from the date of the last act alleged to
19 constitute malfeasance or illegal conduct.

20 (B) If a continuing course of conduct is alleged against a
21 public officer or employee, any act constituting malfeasance or illegal
22 conduct alleged against the public officer or employee shall be considered
23 within the limitations period under this subsection if the lawsuit is filed
24 within seven (7) years from the date of the last act alleged to constitute
25 malfeasance or illegal conduct.

26 (C)(i) A public officer or employee is civilly liable
27 under this subchapter for acts of malfeasance or illegal conduct committed by
28 the public officer or employee.

29 (ii) However:

30 (a) Allegations against a public officer or
31 employee under this subchapter during his or her tenure in, appointment to,
32 or employment with multiple local or state agencies shall be listed as
33 separate counts in the complaint; and

34 (b) The limitations period under this
35 subsection shall be calculated separately as to allegations of malfeasance or
36 illegal conduct committed while the public officer or employee was tenured

1 in, appointed to, or employed by each local or state agency.

2 (2) The limitations period under this subsection is tolled if a
3 person subject to a lawsuit under this subchapter prevents the commencement
4 of an action under this subchapter by leaving the state, absconding,
5 concealing himself or herself, or by any other improper act.

6 (d) The burden of proof for a party to a lawsuit under this subchapter
7 is proof by a preponderance of the evidence.

8
9 21-1-805. Available remedies.

10 (a) The following remedies are available to the State of Arkansas as
11 the prevailing plaintiff to a lawsuit filed under this subchapter:

12 (1)(A)(i) Money damages in an amount up to three (3) times the:

13 (a) Amount of money or public funds proven to
14 have been stolen, illegally expended, improperly used, or mishandled; or

15 (b) Value of the public property proven to
16 have been stolen, illegally expended, improperly used, or mishandled.

17 (ii) However, if the defendant was a constitutional
18 officer or director of a state agency at the time the alleged malfeasance or
19 illegal conduct occurred, money damages may be in an amount up to ten (10)
20 times the:

21 (a) Amount of money or public funds proven to
22 have been stolen, illegally expended, improperly used, or mishandled; or

23 (b) Value of the public property proven to
24 have been stolen, illegally expended, improperly used, or mishandled.

25 (B) Any money repaid or reimbursed by the public officer
26 or employee to the local or state agency before trial shall be considered a
27 setoff against any future award of money damages under this section.

28 (C) Money damages under this section shall not be:

29 (i) Paid out of any state or locally created or
30 maintained fund; or

31 (ii) Derived from any taxpayer-subsidized source;

32 (2) Injunctive relief as permitted by law;

33 (3) If the public officer or employee remains in office, in an
34 appointed position, or employed by a local or state agency, a court order
35 removing the public officer or employee from the office, appointed position,
36 or employment, to the extent permitted by law;

1 (4)(A) Interest equal to the maximum interest rate allowed by
2 law at the time of the judgment.

3 (B) Interest calculated under this subdivision (a)(4) is
4 the maximum interest rate allowed by law at the time of the judgment and
5 shall be calculated from the date the money or public funds were stolen,
6 illegally expended, improperly used, or mishandled, or from the date the
7 public property was stolen, illegally expended, improperly used, or
8 mishandled; and

9 (5) Reasonable costs and attorney's fees.

10 (b)(1) Reasonable costs and attorney's fees are available to a
11 prevailing defendant to a lawsuit filed under this subchapter.

12 (2) An award of costs and attorney's fees shall be paid from the
13 Public Officer and Employee Integrity Enforcement Fund.

14 (c)(1) Any award of money damages shall be paid by the Attorney
15 General to the local or state agency in an amount equal to the full
16 restitution amount.

17 (2) Any money damages awarded over the full restitution amount,
18 as well as any interest, reasonable costs, or attorney's fees assessed under
19 this section shall be deposited by the Attorney General into the Public
20 Officer and Employee Integrity Enforcement Fund.

21 (d) A person against whom a judgment is rendered in a lawsuit under
22 this subchapter shall be required to disclose on his or her statement of
23 financial interest required to be filed with any state agency for any reason
24 any outstanding money damages, restitution, reimbursement, costs, fees, or
25 interest not fully paid, even if the money damages, restitution,
26 reimbursement, costs, fees, or interest has been discharged in bankruptcy.

27
28 21-1-806. Settlement offer.

29 (a) The Attorney General may and is encouraged to engage in meaningful
30 settlement negotiations with the defendant after the commencement of a
31 lawsuit filed under this subchapter.

32 (b) A settlement under this section is required to contain and shall
33 not be valid absent the following provisions:

34 (1)(A)(i) Except as provided under subdivision (b)(1)(D) of this
35 section, repayment by the defendant of the total:

36 (a) Amount of money or public funds stolen,

1 illegally expended, improperly used, or mishandled; or

2 (b) Value of the public property stolen,
3 illegally expended, improperly used, or mishandled.

4 (ii) If applicable, the repayment under subdivision
5 (b)(1)(A)(i) of this section shall include interest, attorney's fees, and any
6 associated litigation costs.

7 (B) Interest calculated under this subdivision (b)(1) is
8 the maximum interest rate allowed by law at the time of the settlement and
9 shall be calculated from the date the money or public funds were stolen,
10 illegally expended, improperly used, or mishandled, or from the date the
11 public property was stolen, illegally expended, improperly used, or
12 mishandled.

13 (C) The repayment of the money or public funds or the
14 repayment of the value of the public property shall be completed before or at
15 the time of the settlement unless the Attorney General waives this
16 requirement in lieu of a structured payment plan approved by:

17 (i) The court; and

18 (ii) If the defendant is subject to a pending case
19 or order in a United States bankruptcy court, the judge presiding over the
20 bankruptcy petition.

21 (D) The Attorney General may enter into a settlement with
22 a defendant under this section that does not fully repay the total amount of
23 money or public funds stolen, illegally expended, improperly used, or
24 mishandled, or the value of the public property stolen, illegally expended,
25 improperly used, or mishandled as required under subdivision (b)(1)(A) of
26 this section if the Attorney General submits an electronic or written
27 explanation to the membership of the Legislative Joint Auditing Committee as
28 to why full repayment was not required;

29 (2) The defendant's resignation of his or her office,
30 employment, or appointment with the local or state agency if he or she
31 remains in that office, employment, or appointed position at the time of the
32 settlement agreement;

33 (3) The defendant's written agreement that he or she shall not
34 seek an office or accept employment or an appointment to an office with any
35 local or state agency for a period of five (5) years; and

36 (4) The defendant's agreement to waive any statute-of-

1 limitations defense if the defendant violates the settlement agreement and
2 the lawsuit is reopened.

3 (c) If a defendant who agrees to a settlement under this section
4 violates the settlement agreement, the Attorney General may reopen the
5 lawsuit and proceed under this subchapter with the full range of remedies
6 available.

7 (d)(1) Any restitution or repayment of the value of the public
8 property included in a settlement agreement under this section shall be paid
9 by the Attorney General to the local or state agency in an amount equal to
10 the full restitution amount.

11 (2) Any interest, reasonable costs of litigation, or attorney's
12 fees paid by a defendant as part of a settlement agreement under this section
13 shall be deposited by the Attorney General into the Public Officer and
14 Employee Integrity Enforcement Fund.

15
16 21-1-807. Existing remedies not impaired.

17 This subchapter is supplemental to any other remedies available by law
18 and does not limit or diminish any civil rights or administrative procedures
19 available to any public officer or employee.

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21 21-1-808. Venue.

22 All cases brought under this subchapter shall be filed in Pulaski
23 County Circuit Court.

24
25 SECTION 4. EMERGENCY CLAUSE. It is found and determined by the
26 General Assembly of the State of Arkansas that there are bad actors
27 occasionally in the employ of state or local government or appointed or
28 elected to a position in state or local government who operate without
29 oversight and with impunity; that the state requires a strong resource to
30 force removal of those bad actors through a civil remedy that encourages
31 those bad actors to resign or risk serious financial hardship; and that this
32 act is immediately necessary because the integrity of state and local
33 government is of utmost importance and requires immediate recognition and
34 enforcement. Therefore, an emergency is declared to exist, and this act
35 being immediately necessary for the preservation of the public peace, health,
36 and safety shall become effective on:

- 1 (1) The date of its approval by the Governor;
- 2 (2) If the bill is neither approved nor vetoed by the Governor,
- 3 the expiration of the period of time during which the Governor may veto the
- 4 bill; or
- 5 (3) If the bill is vetoed by the Governor and the veto is
- 6 overridden, the date the last house overrides the veto.

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/s/Hickey