

House Engrossed Senate Bill

**FILED**

**KEN BENNETT  
SECRETARY OF STATE**

State of Arizona  
Senate  
Forty-ninth Legislature  
Second Regular Session  
2010

CHAPTER 210

# **SENATE BILL 1325**

AN ACT

AMENDING SECTION 38-1101, ARIZONA REVISED STATUTES; RELATING TO LAW ENFORCEMENT OFFICERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 38-1101, Arizona Revised Statutes, is amended to  
3 read:

4 38-1101. Law enforcement officers; probation officers; right to  
5 representation; right to evidence on appeal; change  
6 of hearing officer or administrative law judge;  
7 burden of proof; polygraph examinations; definitions

8 A. If an employer interviews a law enforcement officer or probation  
9 officer and the employer reasonably believes that the interview could result  
10 in dismissal, demotion or suspension OR IF THE LAW ENFORCEMENT OFFICER OR  
11 PROBATION OFFICER REASONABLY BELIEVES THE INVESTIGATION COULD RESULT IN A  
12 DISMISSAL, DEMOTION OR SUSPENSION:

13 1. The law enforcement officer or probation officer may request to  
14 have a representative of the officer present at no cost to the employer  
15 during the interview. The law enforcement officer or probation officer shall  
16 select a representative who is available on reasonable notice so that the  
17 interview is not unreasonably delayed. The representative shall participate  
18 in the interview only as an observer. Unless agreed to by the employer, the  
19 representative shall be from the same agency and shall not be an attorney  
20 EXCEPT THAT IF A REPRESENTATIVE FROM THE SAME AGENCY IS NOT REASONABLY  
21 AVAILABLE, WITH THE EMPLOYER'S PERMISSION, THE LAW ENFORCEMENT OFFICER'S OR  
22 PROBATION OFFICER'S REPRESENTATIVE MAY BE FROM THE LAW ENFORCEMENT OFFICER'S  
23 OR PROBATION OFFICER'S PROFESSIONAL MEMBERSHIP ORGANIZATION. The law  
24 enforcement officer or probation officer shall be permitted reasonable breaks  
25 of limited duration during any interview for telephonic or in person  
26 consultation with others, including an attorney, who are immediately  
27 available. An employer shall not discipline, retaliate against or threaten  
28 to retaliate against a law enforcement officer or probation officer for  
29 requesting that a representative be present or for acting as the  
30 representative of a law enforcement officer or probation officer pursuant to  
31 this paragraph.

32 2. Before the commencement of any interview described in this section,  
33 the employer shall provide the law enforcement officer or probation officer  
34 with a written notice informing the officer of the ALLEGED FACTS THAT ARE THE  
35 BASIS OF THE INVESTIGATION, THE specific nature of the investigation, the  
36 officer's status in the investigation, all known allegations of misconduct  
37 that are the reason for the interview and the officer's right to have a  
38 representative present at the interview. THE NOTICE SHALL INCLUDE COPIES OF  
39 ALL COMPLAINTS THAT CONTAIN THE ALLEGED FACTS THAT ARE REASONABLY AVAILABLE,  
40 EXCEPT FOR COPIES OF COMPLAINTS THAT INVOLVE MATTERS PURSUANT TO FEDERAL LAWS  
41 UNDER THE JURISDICTION OF THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

42 3. The employer may require the law enforcement officer or probation  
43 officer to submit to a polygraph examination if the officer makes a statement  
44 to the employer during the investigation that differs from other information  
45 relating to the investigation that is known to the employer and reconciling

1 that difference is necessary to complete the investigation. If a polygraph  
2 examination is administered pursuant to this paragraph, the employer or the  
3 person administering the polygraph examination shall make an audio recording  
4 of the complete polygraph procedure and provide a copy of the recording to  
5 the law enforcement officer or probation officer.

6 4. The law enforcement officer or probation officer, at the conclusion  
7 of the interview, is entitled to a period of time to consult with the  
8 officer's representative and may make a statement not to exceed five minutes  
9 addressing specific facts or policies that are related to the interview.

10 B. Subsection A does not require the employer to either:

11 1. Stop an interview to issue another notice for allegations based on  
12 information provided by the law enforcement officer or probation officer  
13 during the interview.

14 2. Disclose any fact to the law enforcement officer or probation  
15 officer or the law enforcement officer's or probation officer's  
16 representative that would impede the investigation.

17 C. Subsection A, paragraphs 1 and 2 do not apply to an interview of a  
18 law enforcement officer or probation officer that is:

19 1. In the normal course of duty, counseling or instruction or an  
20 informal verbal admonishment by, or other routine or unplanned contact with,  
21 a supervisor or any other law enforcement officer or probation officer.

22 2. Preliminary questioning to determine the scope of the allegations  
23 or if an investigation is necessary.

24 3. Conducted in the course of a criminal investigation.

25 4. Conducted in the course of a polygraph examination.

26 D. In any appeal of a disciplinary action by a law enforcement officer  
27 or probation officer, the parties shall exchange copies of all relevant  
28 documents and a list of all witnesses pursuant to the following time periods  
29 and requirements:

30 1. Within three business days after the employer's receipt of a  
31 written request from the law enforcement officer or probation officer for a  
32 copy of the investigative file that is accompanied by a copy of the filed  
33 notice of appeal, the employer shall provide a complete copy of the  
34 investigative file as well as the names and home or work mailing addresses of  
35 all persons interviewed during the course of the investigation.

36 2. No later than five business days before the appeal hearing, or, if  
37 the appeal hearing is scheduled more than twenty days after the notice of  
38 appeal, no later than ten business days before the appeal hearing, the  
39 employer and the law enforcement officer or probation officer shall exchange  
40 copies of any documents that may be introduced at the hearing and that have  
41 not previously been disclosed.

42 3. No later than five business days before the appeal hearing, or, if  
43 the appeal hearing is scheduled more than twenty days after the notice of  
44 appeal, no later than ten business days before the appeal hearing, the  
45 employer and the law enforcement officer or probation officer shall exchange

1 the names of all witnesses who may be called to testify. A witness may be  
2 interviewed at the discretion of the witness. The parties shall not  
3 interfere with any decision of a witness regarding whether to be interviewed.  
4 An employer shall not discipline, retaliate against or threaten to retaliate  
5 against any witness for agreeing to be interviewed or for testifying or  
6 providing evidence in the appeal.

7 E. It is unlawful for a person to disseminate information that is  
8 disclosed pursuant to subsection D to any person other than the parties to  
9 the appeal and their lawful representatives for purposes of the appeal of the  
10 disciplinary action. This subsection does not prohibit the use of the  
11 information in the hearing or disclosure pursuant to title 39, chapter 1,  
12 article 2.

13 F. The employer or the law enforcement officer or probation officer  
14 may seek a determination by the hearing officer, administrative law judge or  
15 appeals board hearing the appeal regarding any evidence that the employer or  
16 the law enforcement officer or probation officer believes should not be  
17 disclosed pursuant to subsection D because the risk of harm involved in  
18 disclosure outweighs any usefulness of the disclosure in the hearing. In  
19 determining whether evidence will be disclosed, the hearing officer,  
20 administrative law judge or appeals board may perform an in camera review of  
21 the evidence and may disclose the material subject to any restriction on the  
22 disclosure, including the closing of the hearing or the sealing of the  
23 records, that the hearing officer, administrative law judge or appeals board  
24 finds necessary under the circumstances.

25 G. In any appeal of a disciplinary action by a law enforcement officer  
26 or probation officer in which a single hearing officer or administrative law  
27 judge has been appointed to conduct the appeal hearing, the law enforcement  
28 officer or probation officer or the employer may request a change of hearing  
29 officer or administrative law judge. In cases before the office of  
30 administrative hearings or if the employer is a county with a population of  
31 two hundred fifty thousand or more persons or a city with a population of  
32 sixty-five thousand or more persons, on the first request of a party, the  
33 request shall be granted. All other requests, including any subsequent  
34 requests in cases before the office of administrative hearings or if the  
35 employer is a county with a population of two hundred fifty thousand or more  
36 persons or a city with a population of sixty-five thousand or more persons,  
37 may be granted only on a showing that a fair and impartial hearing cannot be  
38 obtained due to the prejudice of the assigned hearing officer or  
39 administrative law judge. The supervisor or supervising body of the hearing  
40 officer or administrative law judge shall decide whether a showing of  
41 prejudice has been made.

42 H. A party who violates subsection D or E, unless the violation is  
43 harmless, shall not be permitted to use that evidence at the hearing, except  
44 on a showing of good cause. The hearing officer or administrative law judge,  
45 on a showing of good cause, may grant the opposing party a continuance,

1 otherwise limit the use of the evidence or make such other order as may be  
2 appropriate.

3 I. The burden of proof in an appeal of a disciplinary action by a law  
4 enforcement officer or probation officer shall be on the employer.

5 J. Except where a statute or ordinance makes the administrative  
6 evidentiary hearing the final administrative determination, an employer or a  
7 person acting on behalf of an employer may amend, modify, reject or reverse a  
8 decision made by a hearing officer, administrative law judge or appeals board  
9 after a hearing where the law enforcement officer or probation officer and  
10 the employer have been equally allowed to call and examine witnesses,  
11 cross-examine witnesses, provide documentary evidence and otherwise fully  
12 participate in the hearing if the decision was arbitrary or without  
13 reasonable justification and the employer or person acting on behalf of the  
14 employer states the reason for the amendment, modification, rejection or  
15 reversal.

16 K. An employer shall not include in that portion of the personnel file  
17 of a law enforcement officer or probation officer that is available for  
18 public inspection and copying any information about an investigation until  
19 the investigation is complete or the employer has discontinued the  
20 investigation. If the law enforcement officer or probation officer has  
21 timely appealed a disciplinary action, the investigation is not complete  
22 until the conclusion of the appeal process.

23 L. This section does not preempt agreements that supplant, revise or  
24 otherwise alter the provisions of this section, including preexisting  
25 agreements between the employer and the law enforcement officer or probation  
26 officer or the law enforcement officer's or probation officer's lawful  
27 representative association.

28 M. NOTWITHSTANDING SECTION 39-123, ALL DATA AND REPORTS FROM A  
29 POLYGRAPH EXAMINATION OF A LAW ENFORCEMENT OFFICER OR PROBATION OFFICER ARE  
30 CONFIDENTIAL AND MAY ONLY BE USED FOR EMPLOYMENT, CERTIFICATION OR  
31 REACTIVATION OF CERTIFICATION PURPOSES OR THE ADMINISTRATIVE MATTER FOR WHICH  
32 A POLYGRAPH WAS ADMINISTERED, INCLUDING OTHER ANCILLARY MATTERS. ALL OTHER  
33 USES ARE PROHIBITED.

34 N. EXCEPT FOR A PREEMPLOYMENT POLYGRAPH IN WHICH AN APPLICANT WAS NOT  
35 HIRED OR IN THE CASE OF AN ACTIVE INVESTIGATION OR AN APPEAL, THE DATA AND  
36 REPORTS FROM A POLYGRAPH EXAMINATION OF A LAW ENFORCEMENT OFFICER OR  
37 PROBATION OFFICER SHALL BE DESTROYED AS SOON AS PRACTICABLE THREE YEARS AFTER  
38 THE DATE OF APPOINTMENT OR EMPLOYMENT BUT NOT MORE THAN NINETY DAYS AFTER  
39 THAT DATE.

40 M. O. For the purposes of this section:

41 1. "Appeal" means a hearing before a state or local merit board, a  
42 civil service board, an administrative law judge or a hearing officer.

1           2. "Disciplinary action" means the dismissal, demotion or suspension  
2 for more than ~~twenty-four~~ SIXTEEN hours of a law enforcement officer or  
3 probation officer that is authorized by statute, charter or ordinance and  
4 that is subject to a hearing or other procedure by a local merit board, a  
5 civil service board, an administrative law judge or a hearing officer.

6           3. "Investigative file" means the law enforcement agency's complete  
7 report and any attachments detailing the incidents leading to the  
8 disciplinary action.

9           4. "Law enforcement officer" means:

10          (a) An individual, other than a probationary employee, who is  
11 certified by the Arizona peace officer standards and training board, other  
12 than a person employed by a multi-county water conservation district.

13          (b) A detention officer or correction officer, other than a  
14 probationary employee, who is employed by this state or a political  
15 subdivision of this state.

16          5. "Probation officer" means a probation officer or surveillance  
17 officer, other than a probationary employee, who is employed by this state or  
18 a political subdivision of this state.

APPROVED BY THE GOVERNOR APRIL 29, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 30, 2010.

Passed the House April 20, 2010,

by the following vote: 57 Ayes,

0 Nays, 3 Not Voting

[Signature]  
Speaker of the House

Cheryl Laube  
Chief Clerk of the House

Passed the Senate February 22, 2010,

by the following vote: 29 Ayes,

1 Nays, 0 Not Voting

[Signature]  
President of the Senate

Charmion Bellington  
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

**S.B. 1325**

**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

SENATE CONCURS IN HOUSE  
AMENDMENTS AND FINAL PASSAGE

Passed the Senate April 22, 20 10

by the following vote: 26 Ayes,

0 Nays, 4 Not Voting

Bartan Jeff  
President of the Senate  
President Pro Tempore  
Chermin B. Blumenthal  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill received by the Governor this

23 day of April, 20 10

at 9:05 o'clock A. M.

Michelle Bondce  
Secretary to the Governor

Approved this 29 day of

April

at 6:18 o'clock P. M.

Janice K. Brewer  
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 30<sup>th</sup> day of April, 20 10

S.B. 1325

at 8:51 o'clock a M.

Ken Blumenthal  
Secretary of State