House Engrossed Senate Bill

FILED
KEN BENNETT
SECRETARY OF STATE

State of Arizona
Senate
Fiftieth Legislature
First Regular Session
2011

CHAPTER 308

SENATE BILL 1398

AN ACT

AMENDING TITLE 12, CHAPTER 1, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 12-116.04; AMENDING SECTIONS 28-1201, 28-1592 AND 28-1593, ARIZONA REVISED STATUTES; REPEALING SECTION 28-1602, ARIZONA REVISED STATUTES; AMENDING TITLE 28, CHAPTER 5, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 28-1602; REPEALING SECTION 28-3323, ARIZONA REVISED STATUTES; PROVIDING FOR THE DELAYED REPEAL OF SECTION 41-1722, ARIZONA REVISED STATUTES; AMENDING SECTION 41-1723, ARIZONA REVISED STATUTES; AMENDING SECTION 41-1724, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2011, CHAPTER 33, SECTION 20; AMENDING LAWS 2010, CHAPTER 266, SECTION 11; MAKING APPROPRIATIONS; RELATING TO LAW ENFORCEMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Title 12, chapter 1, article 1, Arizona Revised Statutes, is amended by adding section 12-116.04, to read:

12-116.04. Assessment; law enforcement officer equipment; gang and immigration intelligence team enforcement mission

A. IN ADDITION TO ANY OTHER PENALTY ASSESSMENT PROVIDED BY LAW, A PENALTY ASSESSMENT SHALL BE LEVIED IN AN AMOUNT OF THIRTEEN DOLLARS ON EVERY FINE, PENALTY AND FORFEITURE IMPOSED AND COLLECTED BY THE COURTS FOR CRIMINAL OFFENSES AND ANY CIVIL PENALTY IMPOSED AND COLLECTED FOR A CIVIL TRAFFIC VIOLATION AND FINE, PENALTY OR FORFEITURE FOR A VIOLATION OF THE MOTOR VEHICLE STATUTES, FOR ANY LOCAL ORDINANCE RELATING TO THE STOPPING, STANDING OR OPERATION OF A VEHICLE OR FOR A VIOLATION OF THE GAME AND FISH STATUTES IN TITLE 17.

B. THE COURT SHALL TRANSMIT THE ASSESSMENTS COLLECTED PURSUANT TO THIS SECTION AND A REMITTANCE REPORT OF THE FINES, CIVIL PENALTIES AND ASSESSMENTS COLLECTED PURSUANT TO THIS SECTION TO THE COUNTY TREASURER, EXCEPT THAT MUNICIPAL COURTS SHALL TRANSMIT THE ASSESSMENTS AND THE REMITTANCE REPORT OF THE FINES, CIVIL PENALTIES AND ASSESSMENTS TO THE CITY TREASURER.

C. THE CITY OR COUNTY TREASURER SHALL TRANSMIT EIGHT DOLLARS OF THE ASSESSMENT AND THE REMITTANCE REPORT TO THE STATE TREASURER. THE STATE TREASURER SHALL DEPOSIT FOUR DOLLARS OF THE ASSESSMENT IN THE PUBLIC SAFETY EQUIPMENT FUND ESTABLISHED BY SECTION 41-1723 AND THE REMAINING FOUR DOLLARS OF THE ASSESSMENT IN THE GANG AND IMMIGRATION INTELLIGENCE TEAM ENFORCEMENT MISSION BORDER SECURITY AND LAW ENFORCEMENT SUBACCOUNT ESTABLISHED BY SECTION 41-1724.

D. THE CITY OR COUNTY TREASURER SHALL TRANSMIT FOUR DOLLARS OF THE ASSESSMENT AND THE REMITTANCE REPORT TO THE AGENCY THAT INVESTIGATED THE OFFENSE OR ISSUED THE CITATION TO BE USED TO SUPPLEMENT, NOT SUPPLANT, MONIES AVAILABLE FOR OFFICER SAFETY EQUIPMENT.

E. THE CITY TREASURER SHALL TRANSMIT ONE DOLLAR OF THE ASSESSMENT AND THE REMITTANCE REPORT TO THE COUNTY TREASURER. THE COUNTY TREASURER SHALL TRANSMIT ONE DOLLAR OF THE ASSESSMENT AND ANY MONIES RECEIVED FROM THE CITY TREASURER PURSUANT TO THIS SUBSECTION TO THE FOLLOWING ENTITIES TO BE USED TO IMPROVE, MAINTAIN AND ENHANCE THE ABILITY TO COLLECT AND MANAGE MONIES ASSESSED OR RECEIVED BY THE COURTS, TO IMPROVE COURT AUTOMATION AND TO IMPROVE CASE PROCESSING OR THE ADMINISTRATION OF JUSTICE:

1. IN A COUNTY WITH A POPULATION OF LESS THAN TWO MILLION PERSONS, TO THE JUSTICE COURTS, DISTRIBUTED PROPORTIONALLY BASED ON THE JUDICIAL PRODUCTIVITY CREDITS CALCULATED PURSUANT TO SECTION 22-125.

2. IN A COUNTY WITH A POPULATION OF TWO MILLION PERSONS OR MORE, TO THE JUSTICE COURT ADMINISTRATION.

Sec. 2. Section 28-1201, Arizona Revised Statutes, is amended to read:

28-1201. Definition of photo enforcement system

In this article, unless the context otherwise requires, "photo enforcement system" has the same meaning prescribed in section 28-601 ~~and includes a state photo enforcement system established pursuant to section 41-1722~~.

Sec. 3. Section 28-1592, Arizona Revised Statutes, is amended to read:

28-1592. Commencement of action

A. A civil traffic violation case is commenced by issuance or filing of a uniform traffic ticket and complaint as provided in this article.

B. A civil traffic violation case shall be commenced as follows:

1. If a case is commenced by issuance, it shall be issued within sixty days of the alleged violation.

2. If the case is commenced by filing, it shall be filed within sixty days of the alleged violation and shall be served within ninety days from the filing date.

3. Except as provided in paragraph 4, within one hundred eighty days of the alleged violation if the alleged violation is under investigation in conjunction with a traffic accident.

4. Within one year of the alleged violation if the alleged violation is under investigation in conjunction with a traffic accident resulting in death.

~~5. If the alleged violation is detected by the state photo enforcement system established pursuant to section 41-1722, the case shall be filed within one hundred twenty days of the alleged violation.~~

Sec. 4. Section 28-1593, Arizona Revised Statutes, is amended to read:

28-1593. Service of uniform traffic ticket and complaint

A. ~~Except as provided in section 28-1602,~~ A traffic complaint may be served by delivering a copy of the uniform traffic ticket and complaint to the person charged with the violation or by any means authorized by the rules of civil procedure. At the discretion of the issuing authority, a complaint for a violation issued after an investigation in conjunction with a traffic accident may be sent by certified mail, return receipt requested and delivered to addressee only, to the address provided by the person charged with the violation. Service of the complaint is complete on filing the receipt in the court having jurisdiction of the violation.

B. ~~Except as provided in section 28-1602, subsection A,~~ The original complaint shall be filed in a court having jurisdiction of the violation within ten court days of the time the complaint was issued. A peace officer, or duly authorized agent or someone paid to act on behalf of a traffic enforcement agency, may issue the traffic complaint.

~~C. If a person fails to respond to a notice of violation or contests responsibility, a uniform traffic ticket and complaint shall be served and filed as otherwise provided in this section, except that the complaint resulting from the state photo enforcement system as defined in section~~

~~28-1602 shall not be filed in court before the person is personally served with the complaint.~~

~~D. The supreme court shall establish rules governing the issuance, service and processing of the notice of violation, including rules allowing a person to admit responsibility before a uniform traffic ticket and complaint is filed in court.~~

C. IF A LAW ENFORCEMENT AGENCY ISSUES A CITATION AS A RESULT OF A PHOTO ENFORCEMENT SYSTEM AND SERVES THE CITATION IN A MANNER OTHER THAN WHAT IS PRESCRIBED BY SUBSECTION A OF THIS SECTION, THE AGENCY SHALL INFORM THE PERSON THAT THERE IS NO OBLIGATION TO IDENTIFY THE DRIVER OR RESPOND TO THE CITATION. FAILURE TO RESPOND TO THE CITATION WILL RESULT IN THE PROBABILITY THAT THE PERSON WILL BE FORMALLY SERVED PURSUANT TO STATE LAW AND THE ARIZONA RULES OF CIVIL PROCEDURE WHICH WILL LIKELY RESULT IN THE PERSON BEING REQUIRED TO PAY THE COST OF THE SERVICE.

Sec. 5. Repeal

Section 28-1602, Arizona Revised Statutes, is repealed.

Sec. 6. Title 28, chapter 5, article 4, Arizona Revised Statutes, is amended by adding a new section 28-1602, to read:

28-1602. Photo enforcement violation; no duty to identify photo or respond

A. NOTWITHSTANDING ANY OTHER LAW, IF A PERSON RECEIVES A NOTICE OF VIOLATION IN THE MAIL FOR A VIOLATION OF CHAPTER 3, ARTICLE 3 OR 6 OF THIS TITLE OR OF A CITY OR TOWN ORDINANCE FOR EXCESSIVE SPEED OR FAILURE TO OBEY A TRAFFIC CONTROL DEVICE THAT IS OBTAINED USING A PHOTO ENFORCEMENT SYSTEM, THE PERSON DOES NOT HAVE TO DO EITHER OF THE FOLLOWING:

1. IDENTIFY WHO IS IN THE PHOTO.

2. RESPOND TO THE NOTICE OF VIOLATION.

B. THE NOTICE OF VIOLATION THAT IS DESCRIBED IN SUBSECTION A OF THIS SECTION MUST STATE THE FOLLOWING:

1. THE NOTICE IS NOT A COURT ISSUED DOCUMENT AND THE RECIPIENT IS UNDER NO OBLIGATION TO IDENTIFY THE PERSON OR RESPOND TO THE NOTICE.

2. FAILURE TO RESPOND TO THE NOTICE MAY RESULT IN OFFICIAL SERVICE THAT MAY RESULT IN AN ADDITIONAL FEE BEING LEVIED.

C. FOR THE PURPOSES OF THIS SECTION:

1. "NOTICE OF VIOLATION" MEANS A NOTICE ISSUED BY A PHOTO ENFORCEMENT COMPANY OR MUNICIPALITY THAT IS NOT A UNIFORM TRAFFIC TICKET OR COMPLAINT.

2. "PHOTO ENFORCEMENT SYSTEM" HAS THE SAME MEANING PRESCRIBED IN SECTION 28-601.

Sec. 7. Repeal

Section 28-3323, Arizona Revised Statutes, is repealed.

Sec. 8. Delayed repeal

Section 41-1722, Arizona Revised Statutes, is repealed from and after June 30, 2012.

Sec. 9. Section 41-1723, Arizona Revised Statutes, is amended to read:

41-1723. Public safety equipment fund; distribution

A. The public safety equipment fund is established consisting of monies deposited in the fund pursuant to sections 5-395.01, 5-396, 5-397, 12-116.04, 28-1381, 28-1382, 28-1383, 28-8284, 28-8286, 28-8287 and 28-8288. The department shall administer the fund.

B. Monies DEPOSITED in the fund PURSUANT TO SECTIONS 5-395.01, 5-396, 5-397, 28-1381, 28-1382, 28-1383, 28-8284, 28-8286, 28-8287 AND 28-8288 shall be distributed as follows:

1. The first one million two hundred thousand dollars received each fiscal year as a continuing appropriation to the department for protective armor, electronic stun devices and other safety equipment. Monies appropriated pursuant to this paragraph are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

2. All other monies each fiscal year shall be deposited in the state general fund.

C. MONIES DEPOSITED IN THE FUND PURSUANT TO SECTION 12-116.04 ARE SUBJECT TO LEGISLATIVE APPROPRIATION AND SHALL BE USED BY THE DEPARTMENT FOR PROTECTIVE ARMOR, ELECTRONIC STUN DEVICES AND OTHER SAFETY EQUIPMENT.

Sec. 10. Section 41-1724, Arizona Revised Statutes, as amended by Laws 2011, chapter 33, section 20, is amended to read:

41-1724. Gang and immigration intelligence team enforcement mission fund; subaccount; use of monies; reporting requirement

A. The gang and immigration intelligence team enforcement mission fund is established consisting of monies deposited pursuant to section 11-1051 and monies appropriated by the legislature. The department shall administer the fund. Any monies distributed from the fund to a county sheriff shall go directly to the county sheriff and are not subject to any form of approval by the board of supervisors. Monies in the fund are subject to legislative appropriation.

B. Monies in the fund shall be used for employer sanctions enforcement, enforcing human smuggling and drug smuggling laws, gang and strict immigration enforcement, ~~including border security and border personnel,~~ county jail reimbursement costs relating to illegal immigration and any other use previously authorized in an allocation made by law for the gang and immigration intelligence team enforcement mission.

C. Each year that monies are available in the fund the first one million six hundred thousand dollars shall be allocated to a county sheriff of a county with a population of more than three million persons, then five hundred thousand dollars shall be allocated to a county sheriff of a county with a population of less than five hundred thousand persons but more than three hundred thousand persons and any remaining monies shall be used for agreements or contracts in accordance with subsection D of this section.

D. If the department uses monies from the fund for an agreement or contract with a city, town, county or other entity to provide services for the gang and immigration intelligence team enforcement mission, the city, town, county or other entity shall provide not less than twenty-five per cent of the cost of the services and the department shall provide not more than seventy-five per cent of personal services and employee related expenditures for each agreement or contract but may fund all capital related equipment. This subsection does not apply to a county with a population of more than three million persons or a county with a population of less than five hundred thousand persons but more than three hundred thousand persons.

~~E. A county official in a county with a population of more than five hundred thousand persons but less than two million persons shall not receive any monies from the gang and immigration intelligence team enforcement mission fund.~~

E. THE GANG AND IMMIGRATION INTELLIGENCE TEAM ENFORCEMENT MISSION BORDER SECURITY AND LAW ENFORCEMENT SUBACCOUNT IS ESTABLISHED CONSISTING OF MONIES DEPOSITED PURSUANT TO SECTION 12-116.04 AND MONIES APPROPRIATED BY THE LEGISLATURE. THE DEPARTMENT SHALL ADMINISTER THE FUND. ANY MONIES DISTRIBUTED FROM THE FUND TO A COUNTY SHERIFF SHALL GO DIRECTLY TO THE COUNTY SHERIFF AND ARE NOT SUBJECT TO ANY FORM OF APPROVAL BY THE BOARD OF SUPERVISORS. MONIES IN THE SUBACCOUNT ARE SUBJECT TO LEGISLATIVE APPROPRIATION. MONIES IN THE SUBACCOUNT SHALL BE USED FOR LAW ENFORCEMENT PURPOSES RELATED TO BORDER SECURITY, INCLUDING BORDER PERSONNEL.

F. A law enforcement agency shall not receive any monies from the fund unless the law enforcement agency certifies each fiscal year in writing to the director of the department of public safety that the law enforcement agency is complying with section 11-1051 to the fullest extent allowed by law.

G. The department shall submit an expenditure plan to the joint legislative budget committee for review before expending any monies not identified in the department's previous expenditure plans. Within thirty days after the last day of each calendar quarter, the department shall provide a summary of quarterly and year-to-date expenditures and progress to the joint legislative budget committee, including any prior year appropriations that were nonlapsing.

Sec. 11. Laws 2010, chapter 266, section 11 is amended to read:

Sec. 11. <u>State photo enforcement system penalties; public safety equipment fund</u>

Notwithstanding ~~section~~ SECTIONS 41-1722~~, Arizona Revised Statutes, as amended by this act,~~ and ~~section~~ 41-1723, Arizona Revised Statutes, in fiscal ~~year~~ YEARS 2010-2011 AND 2011-2012, forty per cent of the monies remaining in the photo enforcement fund after paying all expenses and court costs that cover the processing of photo enforcement violations and citations, but not to exceed seven million dollars, shall be deposited, pursuant to sections 35-146 and 35-147, Arizona Revised Statutes, in the public safety equipment

fund established by section 41-1723, Arizona Revised Statutes, and shall be used for the purposes described in section 41-1723, SUBSECTION B, paragraph 1, Arizona Revised Statutes.

Sec. 12. Department of public safety; public safety equipment fund; appropriation

All monies deposited pursuant to section 12-116.04, Arizona Revised Statutes, as added by this act, in the public safety equipment fund, established pursuant to section 41-1723, Arizona Revised Statutes, in fiscal year 2011-2012 are appropriated to the department of public safety and shall be used by the department for protective armor, electronic stun devices and other safety equipment.

Sec. 13. Appropriations; border security; assessment; deposit in general fund

A. The sum of $1,000,000 is appropriated from the state general fund in fiscal year 2011-2012 to the department of public safety to be used by the department of public safety to enter into a memorandum of understanding with a county with a population of more than three hundred thousand persons but less than five hundred thousand persons to purchase equipment and supplies for deputies in the county for border security. On or before June 30, 2012, the department of public safety shall report to the joint legislative budget committee regarding the use of these monies.

B. Notwithstanding section 12-116.04, Arizona Revised Statutes, as added by this act, the state treasurer shall deposit the first $1,000,000 that would otherwise be deposited in the gang and immigration intelligence team enforcement mission border security and law enforcement subaccount established by section 41-1724, Arizona Revised Statutes, as amended by this act, pursuant to section 12-116.04, subsection C, Arizona Revised Statutes, as added by this act, in the state general fund.

C. Monies in the gang and immigration intelligence team enforcement mission border security and law enforcement subaccount established by section 41-1724, Arizona Revised Statutes, as amended by this act, are appropriated in fiscal year 2011-2012 to the department of public safety to be used by the department of public safety for the purposes provided by section 41-1724, subsection E, Arizona Revised Statutes, as amended by this act. On or before June 30, 2012, the department of public safety shall report to the joint legislative budget committee regarding the use of these monies.

Sec. 14. State aid to indigent defense fund; county

Notwithstanding section 11-588, Arizona Revised Statutes, in fiscal year 2011-2012, any monies that are allocated to the state aid to indigent defense fund pursuant to section 41-2421, subsections B and J, Arizona Revised Statutes, shall be deposited in the gang and immigration intelligence team enforcement mission border security and law enforcement subaccount established by section 41-1724, Arizona Revised Statutes, as amended by this act.

APPROVED BY THE GOVERNOR APRIL 28, 2011.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 28, 2011.

Passed the House April 19, 2011,

by the following vote: 38 Ayes,

22 Nays, 0 Not Voting

Speaker of the House

Chief Clerk of the House

Passed the Senate February 22, 2011,

by the following vote: 30 Ayes,

0 Nays, 0 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. 1398

SENATE CONCURS IN HOUSE AMENDMENTS AND FINAL PASSAGE

Passed the Senate April 20, 20 11

by the following vote: 20 Ayes,

10 Nays, 0 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

20 day of April, 2011

at 12:00 o'clock P. M.

Nicole Bendle
Secretary to the Governor

Approved this 28th day of

April

at 2:15 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 28th day of April, 2011

at 4:01 o'clock P M.

Ken Bennett
Secretary of State

S.B. 1398