House Engrossed Senate Bill

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KEN BENNETT
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CHAPTER 355

SENATE BILL 1186

AN ACT

AMENDING SECTIONS 1-215, 13-1210, 32-2414, 38-1101 AND 38-1104, ARIZONA REVISED STATUTES; AMENDING TITLE 38, CHAPTER 8, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 38-1109; REPEALING SECTION 41-192.03, ARIZONA REVISED STATUTES; RELATING TO LAW ENFORCEMENT OFFICERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 1-215, Arizona Revised Statutes, is amended to read:

1-215. Definitions

In the statutes and laws of this state, unless the context otherwise requires:

1. "Action" includes any matter or proceeding in a court, civil or criminal.

2. "Adopted rule" means a final rule as defined in section 41-1001.

3. "Adult" means a person who has attained ~~the age of~~ eighteen years OF AGE.

4. "Alternative fuel" means:

(a) Electricity.

(b) Solar energy.

(c) Liquefied petroleum gas, natural gas, hydrogen or a blend of hydrogen with liquefied petroleum or natural gas that complies with any of the following:

(i) Is used in an engine that is certified to meet at a minimum the United States environmental protection agency low emission vehicle standard pursuant to 40 Code of Federal Regulations section 88.104-94 or 88.105-94.

(ii) Is used in an engine that is certified by the engine modifier to meet the addendum to memorandum 1-A of the United States environmental protection agency as printed in the federal register, volume 62, number 207, October 27, 1997, pages 55635 through 55637.

(iii) Is used in an engine that is the subject of a waiver for that specific engine application from the United States environmental protection agency's memorandum 1-A addendum requirements and that waiver is documented to the reasonable satisfaction of the director of the department of environmental quality.

(d) Only for vehicles that use alcohol fuels before August 21, 1998, alcohol fuels that contain not less than eighty-five per cent alcohol by volume.

(e) A combination of at least seventy per cent alternative fuel and no more than thirty per cent petroleum based fuel that operates in an engine that meets the United States environmental protection agency low emission vehicle standard pursuant to 40 Code of Federal Regulations section 88.104-94 or 88.105-94 and that is certified by the engine manufacturer to consume at least seventy per cent alternative fuel during normal vehicle operations.

5. "Bribe" signifies anything of value or advantage, present or prospective, asked, offered, given, accepted or promised with a corrupt intent to influence, unlawfully, the person to whom it is given in that person's action, vote or opinion, in any public or official capacity.

6. "Child" or "children" as used in reference to age of persons means persons under ~~the age of~~ eighteen years OF AGE.

7. "Clean burning fuel" means:

(a) An emulsion of water-phased hydrocarbon fuel that contains not less than twenty per cent water by volume and that complies with any of the following:

(i) Is used in an engine that is certified to meet at a minimum the United States environmental protection agency low emission vehicle standard pursuant to 40 Code of Federal Regulations section 88.104-94 or 88.105-94.

(ii) Is used in an engine that is certified by the engine modifier to meet the addendum to memorandum 1-A of the United States environmental protection agency as printed in the federal register, volume 62, number 207, October 27, 1997, pages 55635 through 55637.

(iii) Is used in an engine that is the subject of a waiver for that specific engine application from the United States environmental protection agency's memorandum 1-A addendum requirements and that waiver is documented to the reasonable satisfaction of the director of the department of environmental quality.

(b) A diesel fuel substitute that is produced from nonpetroleum renewable resources if the qualifying volume of the nonpetroleum renewable resources meets the standards for California diesel fuel as adopted by the California air resources board pursuant to 13 California Code of Regulations sections 2281 and 2282 in effect on January 1, 2000, the diesel fuel substitute meets the registration requirement for fuels and additives established by the United States environmental protection agency pursuant to section 211 of the clean air act as defined in section 49-401.01 and the use of the diesel fuel substitute complies with the requirements listed in 10 Code of Federal Regulations part 490, as printed in the federal register, volume 64, number 96, May 19, 1999.

(c) A diesel fuel that complies with all of the following:

(i) Contains a maximum of fifteen parts per million by weight of sulfur.

(ii) Meets ASTM D975.

(iii) Meets the registration requirements for fuels and additives established by the United States environmental protection agency pursuant to section 211 of the clean air act as defined in section 49-401.01.

(iv) Is used in an engine that is equipped or has been retrofitted with a device that has been certified by the California air resources board diesel emission control strategy verification procedure, the United States environmental protection agency voluntary diesel retrofit program or the United States environmental protection agency verification protocol for retrofit catalyst, particulate filter and engine modification control technologies for highway and nonroad use diesel engines.

(d) A blend of unleaded gasoline that contains at minimum eighty-five per cent ethanol by volume or eighty-five per cent methanol by volume.

(e) Neat methanol.

(f) Neat ethanol.

8. "Corruptly" imports a wrongful design to acquire or cause some pecuniary or other advantage to the person guilty of the act or omission referred to, or to some other person.

9. "Daytime" means the period between sunrise and sunset.

10. "Depose" includes every manner of written statement under oath or affirmation.

11. "Federal poverty guidelines" means the poverty guidelines as updated annually in the federal register by the United States department of health and human services.

12. "Grantee" includes every person to whom an estate or interest in real property passes, in or by a deed.

13. "Grantor" includes every person from or by whom an estate or interest in real property passes, in or by a deed.

14. "Includes" or "including" means not limited to and is not a term of exclusion.

15. "Inhabitant" means a resident of a city, town, village, district, county or precinct.

16. "Issue" as used in connection with descent of estates includes all lawful, lineal descendants of the ancestor.

17. "Knowingly" imports only a knowledge that the facts exist that bring the act or omission within the provisions of the statute using such word. It does not require any knowledge of the unlawfulness of the act or omission.

18. "Magistrate" means an officer having power to issue a warrant for the arrest of a person charged with a public offense and includes the chief justice and ~~judges~~ JUSTICES of the supreme court, judges of the superior court, justices of the peace and police magistrates in cities and towns.

19. "Majority" or "age of majority" as used in reference to age of persons means the age of eighteen years or more.

20. "Malice" and "maliciously" import a wish to vex, annoy or injure another person, or an intent to do a wrongful act, established either by proof or presumption of law.

21. "Mentally ill person" includes an idiot, an insane person, a lunatic or a person non compos.

22. "Minor" means a person under the age of eighteen years.

23. "Minor children" means persons under the age of eighteen years.

24. "Month" means a calendar month unless otherwise expressed.

25. "Neglect", "negligence", "negligent" and "negligently" import a want of such attention to the nature or probable consequence of the act or omission as a prudent man ordinarily bestows in acting in his own concerns.

26. "Nighttime" means the period between sunset and sunrise.

27. "Oath" includes an affirmation or declaration.

28. "Peace officers" means sheriffs of counties, constables, marshals, policemen of cities and towns, commissioned personnel of the department of public safety, personnel who are employed by the state department of

corrections and the department of juvenile corrections AND who have received a certificate from the Arizona peace officer standards and training board, peace officers who are appointed by a multicounty water conservation district and who have received a certificate from the Arizona peace officer standards and training board, police officers who are appointed by community college district governing boards and who have received a certificate from the Arizona peace officer standards and training board, police officers who are appointed by the Arizona board of regents and who have received a certificate from the Arizona peace officer standards and training board, ~~and~~ police officers who are appointed by the governing body of a public airport pursuant to section 28-8426 and who have received a certificate from the Arizona peace officer standards and training board AND SPECIAL AGENTS FROM THE OFFICE OF THE ATTORNEY GENERAL, OR OF A COUNTY ATTORNEY, AND WHO HAVE RECEIVED A CERTIFICATE FROM THE ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD.

29. "Person" includes a corporation, company, partnership, firm, association or society, as well as a natural person. When the word "person" is used to designate the party whose property may be the subject of a criminal or public offense, the term includes the United States, this state, or any territory, state or country, or any political subdivision of this state that may lawfully own any property, or a public or private corporation, or partnership or association. When the word "person" is used to designate the violator or offender of any law, it includes corporation, partnership or any association of persons.

30. "Personal property" includes money, goods, chattels, dogs, things in action and evidences of debt.

31. "Population" means the population according to the most recent United States decennial census.

32. "Process" means a citation, writ or summons issued in the course of judicial proceedings.

33. "Property" includes both real and personal property.

34. "Real property" is coextensive with lands, tenements and hereditaments.

35. "Registered mail" includes certified mail.

36. "Seal" as used in reference to a paper issuing from a court or public office to which the seal of such court or office is required to be affixed means an impression of the seal on that paper, an impression of the seal affixed to that paper by a wafer or wax, a stamped seal, a printed seal, a screened seal or a computer generated seal.

37. "Signature" or "subscription" includes a mark, if a person cannot write, with the person's name written near it and witnessed by a person who writes the person's own name as witness.

38. "State", as applied to the different parts of the United States, includes the District of Columbia, this state and the territories.

39. "Testify" includes every manner of oral statement under oath or affirmation.

40. "United States" includes the District of Columbia and the territories.

41. "Vessel", as used in reference to shipping, includes ships of all kinds, steamboats, steamships, barges, canal boats and every structure adapted to navigation from place to place for the transportation of persons or property.

42. "Wilfully" means, with respect to conduct or to a circumstance described by a statute defining an offense, that a person is aware or believes that the person's conduct is of that nature or that the circumstance exists.

43. "Will" includes codicils.

44. "Workers' compensation" means workmen's compensation as used in article XVIII, section 8, Constitution of Arizona.

45. "Writ" signifies an order or precept in writing issued in the name of the state or by a court or judicial officer.

46. "Writing" includes printing.

Sec. 2. Section 13-1210, Arizona Revised Statutes, is amended to read:

13-1210. <u>Assaults on public safety employees or volunteers and state hospital employees; disease testing; petition; hearing; notice; definitions</u>

A. A public safety employee or volunteer or the employing agency, officer or entity may petition the court for an order authorizing testing of another person for the human immunodeficiency virus, common blood borne diseases or other diseases specified in the petition if there are reasonable grounds to believe an exposure occurred and ~~either~~ ONE of the following applies:

1. The person is charged in any criminal complaint and the complaint alleges that the person interfered with the official duties of the public safety employee or volunteer by biting, scratching, spitting or transferring blood or other bodily fluids on or through the skin or membranes of the public safety employee or volunteer.

2. There is probable cause to believe that the person interfered with the official duties of the public safety employee or volunteer by biting, scratching, spitting or transferring blood or other bodily fluids on or through the skin or membranes of the public safety employee or volunteer and that the person is deceased.

3. THE PERSON IS ARRESTED, CHARGED OR IN CUSTODY AND THE PUBLIC SAFETY EMPLOYEE OR VOLUNTEER ALLEGES, BY AFFIDAVIT, THAT THE PERSON INTERFERED WITH THE OFFICIAL DUTIES OF THE PUBLIC SAFETY EMPLOYEE OR VOLUNTEER BY BITING, SCRATCHING, SPITTING OR TRANSFERRING BLOOD OR OTHER BODILY FLUIDS ON OR THROUGH THE SKIN OR MEMBRANES OF THE PUBLIC SAFETY EMPLOYEE OR VOLUNTEER.

B. An employee of the Arizona state hospital or the employing agency may petition the court for an order authorizing testing of another person for the human immunodeficiency virus, common blood borne diseases or other diseases specified in the petition if there are reasonable grounds to believe

1 an exposure occurred and the person is a patient who is confined to the
2 Arizona state hospital and who is alleged to have interfered with the
3 official duties of the Arizona state hospital employee by biting, scratching,
4 spitting or transferring blood or other bodily fluids on or through the skin
5 or membranes of the Arizona state hospital employee.
6 C. The court shall hear the petition promptly. If the court finds
7 that probable cause exists to believe that a possible transfer of blood or
8 other bodily fluids occurred between the person and the public safety
9 employee or volunteer or the Arizona state hospital employee, the court shall
10 order that either:
11 1. The person provide two specimens of blood for testing.
12 2. If the person is deceased, the medical examiner draw two specimens
13 of blood for testing.
14 D. Notwithstanding subsection C, paragraph 2 of this section, on
15 written notice from the agency, officer or entity employing the public safety
16 employee or volunteer, the medical examiner is authorized to draw two
17 specimens of blood for testing during the autopsy or other examination of the
18 deceased person's body. The medical examiner shall release the specimen to
19 the employing agency, officer or entity for testing only after the court
20 issues its order pursuant to subsection C, paragraph 2 of this section. If
21 the court does not issue an order within thirty days after the medical
22 examiner collects the specimen, the medical examiner shall destroy the
23 specimen.
24 E. Notice of the test results shall be provided as prescribed by the
25 department of health services to the person tested, to the public safety
26 employee or volunteer or the Arizona state hospital employee named in the
27 petition and to the employee's or volunteer's employing agency, officer or
28 entity and, if the person tested is incarcerated or detained, to the officer
29 in charge and the chief medical officer of the facility in which the person
30 is incarcerated or detained.
31 F. Section 36-665 does not apply to this section.
32 G. For the purposes of this section:
33 1. "Arizona state hospital" includes the Arizona community protection
34 and treatment center.
35 2. "Arizona state hospital employee" means an employee of the Arizona
36 state hospital who has direct patient contact.
37 3. "Private prison security officer" means a security officer who is
38 employed by a private contractor that contracts with a governmental entity to
39 provide detention or incarceration facility services for offenders.
40 4. "Public safety employee or volunteer" means a law enforcement
41 officer, any employee or volunteer of a state or local law enforcement
42 agency, a probation officer, a surveillance officer, an adult or juvenile
43 correctional service officer, a detention officer, a private prison security
44 officer, a firefighter or an emergency medical technician.

Sec. 3. Section 32-2414, Arizona Revised Statutes, is amended to read:

32-2414. Licensure or registration of peace officers prohibited

The department may not issue a license or registration certificate pursuant to this chapter to a peace officer, including a reserve peace officer. This section does not apply to retired peace officers or peace officers, INCLUDING RESERVE PEACE OFFICERS, who are accident reconstructionists OR FIRE ORIGIN AND CAUSE INVESTIGATORS.

Sec. 4. Section 38-1101, Arizona Revised Statutes, is amended to read:

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

A. If an employer interviews a law enforcement officer or probation officer and the employer reasonably believes that the interview could result in dismissal, demotion or suspension or if the law enforcement officer or probation officer reasonably believes the investigation could result in a dismissal, demotion or suspension:

1. The law enforcement officer or probation officer may request to have a representative of the officer present at no cost to the employer during the interview. The law enforcement officer or probation officer shall select a representative who is available on reasonable notice so that the interview is not unreasonably delayed. The representative shall participate in the interview only as an observer. Unless agreed to by the employer, the representative shall be from the same agency and shall not be an attorney except that if a representative from the same agency is not reasonably available, with the employer's permission, the law enforcement officer's or probation officer's representative may be from the law enforcement officer's or probation officer's professional membership organization. The law enforcement officer or probation officer shall be permitted reasonable breaks of limited duration during any interview for telephonic or in person consultation with others, including an attorney, who are immediately available. An employer shall not discipline, retaliate against or threaten to retaliate against a law enforcement officer or probation officer for requesting that a representative be present or for acting as the representative of a law enforcement officer or probation officer pursuant to this paragraph.

2. Before the commencement of any interview described in this section, the employer shall provide the law enforcement officer or probation officer with a written notice informing the officer of the alleged facts that are the basis of the investigation, the specific nature of the investigation, the officer's status in the investigation, all known allegations of misconduct that are the reason for the interview and the officer's right to have a representative present at the interview. The notice shall include copies of all complaints that contain the alleged facts that are reasonably available,

1 except for copies of complaints that involve matters pursuant to federal laws
2 under the jurisdiction of the equal employment opportunity commission.
3 3. After an employer completes an investigation of a law enforcement
4 officer or probation officer if the employer seeks disciplinary action at the
5 request of the law enforcement officer or probation officer, the employer
6 shall provide a basic summary of any discipline ordered against any other law
7 enforcement officer or probation officer of generally similar rank and
8 experience employed by the employer within the previous two years for the
9 same or a similar violation. As an alternative, the employer may provide
10 file copies of the relevant disciplinary cases. The employer shall not take
11 final action and the employer shall not schedule the hearing until the basic
12 summary or file copies are provided to the law enforcement officer or
13 probation officer. This paragraph does not apply if court rule prohibits the
14 release of file copies of disciplinary cases.
15 4. The employer may require the law enforcement officer or probation
16 officer to submit to a polygraph examination if the officer makes a statement
17 to the employer during the investigation that differs from other information
18 relating to the investigation that is known to the employer and reconciling
19 that difference is necessary to complete the investigation. If a polygraph
20 examination is administered pursuant to this paragraph, the employer or the
21 person administering the polygraph examination shall make an audio recording
22 of the complete polygraph procedure and provide a copy of the recording to
23 the law enforcement officer or probation officer.
24 5. The law enforcement officer or probation officer, at the conclusion
25 of the interview, is entitled to a period of time to consult with the
26 officer's representative and may make a statement not to exceed five minutes
27 addressing specific facts or policies that are related to the interview.
28 B. The results of a polygraph examination in an investigation shall
29 not be the basis for disciplinary action unless other evidence or information
30 exists.
31 C. Subsection A of this section does not require the employer to
32 either:
33 1. Stop an interview to issue another notice for allegations based on
34 information provided by the law enforcement officer or probation officer
35 during the interview.
36 2. Disclose any fact to the law enforcement officer or probation
37 officer or the law enforcement officer's or probation officer's
38 representative that would impede the investigation.
39 D. Subsection A, paragraphs 1 and 2 of this section do not apply to an
40 interview of a law enforcement officer or probation officer that is:
41 1. In the normal course of duty, counseling or instruction or an
42 informal verbal admonishment by, or other routine or unplanned contact with,
43 a supervisor or any other law enforcement officer or probation officer.
44 2. Preliminary questioning to determine the scope of the allegations
45 or if an investigation is necessary.

3. Conducted in the course of a criminal investigation.

4. Conducted in the course of a polygraph examination.

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

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

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

3. No later than five business days before the appeal hearing, or, if the appeal hearing is scheduled more than twenty days after the notice of appeal, no later than ten business days before the appeal hearing, the employer and the law enforcement officer or probation officer shall exchange the names of all witnesses who may be called to testify. A witness may be interviewed at the discretion of the witness. The parties shall not interfere with any decision of a witness regarding whether to be interviewed. An employer shall not discipline, retaliate against or threaten to retaliate against any witness for agreeing to be interviewed or for testifying or providing evidence in the appeal.

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

G. The employer or the law enforcement officer or probation officer may seek a determination by the hearing officer, administrative law judge or appeals board hearing the appeal regarding any evidence that the employer or the law enforcement officer or probation officer believes should not be disclosed pursuant to subsection E of this section because the risk of harm involved in disclosure outweighs any usefulness of the disclosure in the hearing. In determining whether evidence will be disclosed, the hearing officer, administrative law judge or appeals board may perform an in camera review of the evidence and may disclose the material subject to any restriction on the disclosure, including the closing of the hearing or the

sealing of the records, that the hearing officer, administrative law judge or appeals board finds necessary under the circumstances.

H. In any appeal of a disciplinary action by a law enforcement officer or probation officer in which a single hearing officer or administrative law judge has been appointed to conduct the appeal hearing, the law enforcement officer or probation officer or the employer may request a change of hearing officer or administrative law judge. In cases before the office of administrative hearings or if the employer is a county, city or town on the first request of a party, the request shall be granted. A city or town with a population of less than sixty-five thousand persons or a county with a population of less than two hundred fifty thousand persons must provide, IF NECESSARY TO COMPLY WITH THIS SUBSECTION, for an alternate hearing officer by means of an interagency agreement with another city, town or county. If the law enforcement officer or probation officer is the party that requested the alternate hearing officer, the law enforcement officer or probation officer shall reimburse the city, town or county for one-half of any additional expenses incurred by the city, town or county in procuring the alternate hearing officer under the interagency agreement. If an alternate hearing officer is requested by means of an interagency agreement, the hearing officer shall provide to the law enforcement officer or probation officer or employer the option of continuing the hearing for an additional ten days. Any subsequent requests may be granted only on a showing that a fair and impartial hearing cannot be obtained due to the prejudice of the assigned hearing officer or administrative law judge. The supervisor or supervising body of the hearing officer or administrative law judge shall decide whether a showing of prejudice has been made.

I. A party who violates subsection A, paragraph 1 of this section, or subsection E or F of this section, unless the violation is harmless, shall not be permitted to use that evidence at the hearing, except on a showing of good cause. The hearing officer or administrative law judge, on a showing of good cause, may grant the opposing party a continuance, otherwise limit the use of the evidence or make such other order as may be appropriate.

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

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

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

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

N. Notwithstanding section 39-123, all data and reports from a polygraph examination of a law enforcement officer or probation officer are confidential and may only be used for employment, certification or reactivation of certification purposes or the administrative matter for which a polygraph was administered, including other ancillary matters. All other uses are prohibited.

O. Except for a preemployment polygraph in which an applicant was not hired or in the case of an active investigation or an appeal, the data and reports from a polygraph examination of a law enforcement officer or probation officer shall be destroyed as soon as practicable three years after the date of appointment or employment but not more than ninety days after that date.

P. For the purposes of this section:

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

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

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

4. "Law enforcement officer" means:

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

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

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

Sec. 5. Section 38-1104, Arizona Revised Statutes, is amended to read:

38-1104. Discipline of law enforcement officers; exceptions; definitions

A. A law enforcement officer shall not be subject to disciplinary action except for just cause.

B. Subsection A of this section does not apply to any law enforcement officer who has not completed an initial probationary period if a probationary period is required by the employer or to a dismissal that is for administrative purposes, including a reduction in force.

C. This section does not preempt agreements that supplant, revise or otherwise alter the provisions of this section, including preexisting agreements, between the employer and the law enforcement officer's lawful representative association.

D. If a law enforcement officer is terminated as the result of a chief of the law enforcement agency or the chief executive officer of a city or town reversing the decision or recommendation of a civil service board or merit commission, WHERE THE FINDING STATES THAT THERE WAS NO JUST CAUSE FOR THE TERMINATION the law enforcement officer ~~who believes the termination was without just cause~~ may bring an action in superior court for a ~~new~~ hearing DE NOVO on the termination.

E. If a law enforcement officer is terminated by the chief of the law enforcement agency or chief executive officer of a city or town where there is not a civil service board or merit commission to review the termination, the law enforcement officer may bring an action in superior court to review the agency's file. If the court finds from a review of the file that just cause for the termination did not exist, the officer is entitled to a hearing on the termination.

F. If the superior court finds that just cause for the termination did not exist, the court shall order the officer reinstated to the officer's previous position with the law enforcement agency and may award to the law enforcement officer monetary damages that shall not exceed the officer's combined total of wages and benefits lost as a result of the termination.

G. In an action pursuant to subsection D or E of this section the court may award the successful party reasonable attorney fees as set forth in section 12-341.01, subsection B and shall award the successful party all costs pursuant to section 12-341.

H. This section does not apply to a law enforcement officer who is employed as an at will employee as a police chief or an assistant police chief in a law enforcement agency.

I. For the purposes of this section:

1. "At will employee" means a person who is employed as an employee who may be terminated at the will of either the employee or employer, at any time, with or without cause.

2. "Disciplinary action" has the same meaning prescribed in section 38-1101.

3. "Just cause" means:

(a) The employer informed the officer of the possible disciplinary action resulting from the officer's conduct through agency manuals, employee handbooks, the employer's rules and regulations or other communications to the officer or the conduct was such that the officer should have reasonably known disciplinary action could occur.

(b) The disciplinary action is reasonably related to the standards of conduct for a professional law enforcement officer, the mission of the agency, the orderly, efficient or safe operation of the agency or the officer's fitness for duty.

(c) The discipline is supported by a preponderance of evidence that the conduct occurred.

(d) The discipline is not excessive and is reasonably related to the seriousness of the offense and the officer's service record.

4. "Law enforcement officer" means:

(a) An individual who is certified by the Arizona peace officer standards and training board, other than a person employed by a multi-county water conservation district, a reserve police officer, a volunteer or a person who is otherwise exempted by an existing merit system.

(b) A ~~correction~~ CORRECTIONS officer or detention officer, excluding a juvenile detention officer, who is employed by this state or a political subdivision of this state.

(c) A regularly appointed and paid deputy sheriff of a county.

(d) A regularly employed police officer in a city or town.

Sec. 6. Title 38, chapter 8, article 1, Arizona Revised Statutes, is amended by adding section 38-1109, to read:

38-1109. <u>Law enforcement officers; fitness for duty examinations; rights of officers; definitions</u>

A. AN EMPLOYER MAY ORDER A LAW ENFORCEMENT OFFICER TO SUBMIT TO A PHYSICAL EXAMINATION ONLY IF THE OFFICER HAS ACTED OR FAILED TO ACT IN AN OBSERVABLE MANNER THAT INDICATES THAT THERE IS A PHYSICAL CONDITION MATERIALLY LIMITING THE OFFICER'S ABILITY TO PERFORM THE ESSENTIAL FUNCTIONS OF THE OFFICER'S JOB WITHIN THE OFFICER'S JOB DESCRIPTION. THE ORDER SHALL STATE ALL OF THE SPECIFIC OBJECTIVE FACTS ON WHICH THE ORDER FOR THE PHYSICAL EXAM IS BASED EXCEPT THAT THE ORDER MAY OMIT THE SPECIFIC NAMES OF INDIVIDUALS WHO REPORTED THE OFFICER'S CONDUCT TO THE SUPERVISOR.

B. THE ORDER SHALL PROVIDE AT LEAST TEN DAYS NOTICE TO THE OFFICER TO BE EXAMINED AND SHALL SPECIFY THE TIME, PLACE, MANNER, CONDITIONS AND SCOPE OF THE EXAMINATION AND THE PERSON OR PERSONS WHO WILL CONDUCT THE EXAMINATION. THE OFFICER TO BE EXAMINED MAY HAVE A REPRESENTATIVE PRESENT DURING THE EXAMINATION IF THE PHYSICIAN CONDUCTING THE EXAMINATION AGREES.

C. THE EMPLOYER SHALL PROVIDE THE LAW ENFORCEMENT OFFICER WITH THE FINAL REPORT OF THE EXAMINATION CONTAINING THE MEDICAL PROFESSIONAL'S FINDINGS. THE EMPLOYER MAY PROVIDE ANY ADDITIONAL INFORMATION RELATED TO THE FITNESS FOR DUTY EXAMINATION TO THE EXAMINING PHYSICIAN.

1 D. THE REPORT SHALL BE PROVIDED ONLY TO THE EMPLOYER AND THE LAW
2 ENFORCEMENT OFFICER AND SHALL NOT BE PROVIDED TO ANY OTHER PERSON EXCEPT AS
3 REQUIRED FOR ANY SUBSEQUENT APPEAL OR CERTIFICATION ACTION INVOLVING THE LAW
4 ENFORCEMENT OFFICER. THE EMPLOYER SHALL PROVIDE NOTICE TO THE OFFICER THAT
5 THE REPORT HAS BEEN RECEIVED BY THE EMPLOYER. THE REPORT SHALL BE PROVIDED
6 TO THE OFFICER IMMEDIATELY IF THE OFFICER PRESENTS THE FINAL REPORT OF AN
7 INDEPENDENT MEDICAL EXAMINATION OR IF THE OFFICER WAIVES ANY RIGHT TO REQUEST
8 AN INDEPENDENT MEDICAL EXAMINATION. IF THE OFFICER DOES NOT PRESENT THE
9 RESULTS OF AN INDEPENDENT MEDICAL EXAMINATION WITHIN TWENTY DAYS AFTER THE
10 EMPLOYER PROVIDES THE OFFICER NOTICE THAT THE REPORT HAS BEEN RECEIVED BY THE
11 EMPLOYER, THE OFFICER IS DEEMED TO HAVE WAIVED THE RIGHT TO PRESENT THE
12 RESULTS OF THE INDEPENDENT MEDICAL EXAMINATION.
13 E. THE EMPLOYER SHALL MAKE A REASONABLE GOOD FAITH EFFORT TO DELIVER
14 THE REPORT TO THE OFFICER.
15 F. THE PHYSICIAN MAY CONSIDER AND REPORT ON ONLY THE OFFICER'S MEDICAL
16 OR OTHER RECORDS THAT ARE DIRECTLY RELEVANT TO THE ACTIONS IN QUESTION AND
17 WHEN CONDUCTING THE EXAMINATION, INCLUDING MEDICAL RECORDS THAT RECORD
18 PREEXISTING CONDITIONS THAT ARE RELEVANT TO THE EXAMINATION. THE PHYSICIAN
19 MAY ADDITIONALLY CONSIDER AND REPORT ANY CONDITION OF THE OFFICER THAT THE
20 PHYSICIAN IDENTIFIES DURING THE COURSE OF THE PHYSICAL EXAMINATION AND THAT
21 ENDANGERS THE SAFETY OF THE OFFICER OR THE COMMUNITY.
22 G. THE EMPLOYER SHALL NOT TAKE ANY FINAL ACTION UNTIL AFTER THE LAW
23 ENFORCEMENT OFFICER HAS HAD AT LEAST TWENTY DAYS TO REVIEW THE REPORT UNLESS
24 THE OFFICER WAIVES THE TWENTY DAY PERIOD OR THE EMPLOYER GRANTS AN EXTENSION.
25 H. THIS SECTION DOES NOT PROHIBIT THE PREEXAMINATION MATERIALS FROM
26 BEING USED IN ANY PROCEEDING HELD PURSUANT TO SECTION 38-1101.
27 I. PROVIDING THE PREEXAMINATION MATERIALS TO THE PERSON CONDUCTING THE
28 INDEPENDENT EXAMINATION OF THE LAW ENFORCEMENT OFFICER DOES NOT CHANGE THE
29 DISCLOSURE REQUIREMENTS UNDER SECTION 38-1101.
30 J. THIS SECTION DOES NOT DIMINISH ANY RIGHTS OF A LAW ENFORCEMENT
31 OFFICER THAT EXIST IN THIS TITLE AND DOES NOT PREEMPT AGREEMENTS THAT
32 SUPPLANT, REVISE OR OTHERWISE ALTER THE PROVISIONS OF THIS SECTION, INCLUDING
33 PREEXISTING AGREEMENTS BETWEEN EMPLOYERS AND LAW ENFORCEMENT OFFICERS OR THE
34 LAW ENFORCEMENT OFFICER'S LAWFUL REPRESENTATIVE ASSOCIATION.
35 K. FOR THE PURPOSES OF THIS SECTION:
36 1. "INDEPENDENT MEDICAL EXAMINATION" MEANS AN ASSESSMENT THAT IS
37 REQUESTED BY A LAW ENFORCEMENT OFFICER, THAT IS CONDUCTED BY A PHYSICIAN WHO
38 IS LICENSED PURSUANT TO TITLE 32, CHAPTER 13 OR 17 AND THAT IS USED TO
39 PROVIDE A SECOND, INDEPENDENT OPINION OF A CURRENT LAW ENFORCEMENT OFFICER
40 WHO HAS BEEN DETERMINED TO NOT BE ABLE TO PERFORM ESSENTIAL FUNCTIONS OF THE
41 JOB AS A RESULT OF OBSERVATION AND A SUBSEQUENT EMPLOYER-ORDERED PHYSICAL
42 EXAMINATION.
43 2. "LAW ENFORCEMENT OFFICER" MEANS:

1 (a) A REGULARLY EMPLOYED AND PAID INDIVIDUAL, OTHER THAN A
2 PROBATIONARY EMPLOYEE, WHO IS CERTIFIED BY THE ARIZONA PEACE OFFICER
3 STANDARDS AND TRAINING BOARD AND WHO IS WORKING IN A POSITION REQUIRING
4 CERTIFICATION BY THE ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD,
5 OTHER THAN A PERSON EMPLOYED BY A MULTI-COUNTY WATER CONSERVATION DISTRICT,
6 AN AT WILL EMPLOYEE OR A VOLUNTARY OR RESERVE EMPLOYEE.
7 (b) A CORRECTIONS OFFICER OR DETENTION OFFICER, EXCLUDING A JUVENILE
8 DETENTION OFFICER, WHO IS EMPLOYED BY THIS STATE OR A POLITICAL SUBDIVISION
9 OF THIS STATE.
10 3. "PREEXAMINATION MATERIALS" MEANS ALL INFORMATION OR MATERIALS THAT
11 THE EMPLOYER GIVES TO THE PHYSICIAN WHO CONDUCTS THE PHYSICAL EXAMINATION AND
12 THAT SERVE AS THE BASIS FOR THE EXAMINATION.
13 Sec. 7. Repeal
14 Section 41-192.03, Arizona Revised Statutes, is repealed.

APPROVED BY THE GOVERNOR MAY 14, 2012.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 15, 2012.

Passed the House May 3, 2012,

by the following vote: 56 Ayes,

0 Nays, 4 Not Voting

Speaker of the House

Cheryl Laube

Chief Clerk of the House

Passed the Senate February 28, 2012,

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. 1186

SENATE CONCURS IN HOUSE AMENDMENTS AND FINAL PASSAGE

Passed the Senate May 3, 20 12

by the following vote: 24 Ayes,

0 Nays, 6 Not Voting

Steve Pierce

President of the Senate

Charmain Billington

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

3rd day of May, 20 12

at 8:21 o'clock P M.

Secretary to the Governor

Approved this 14th day of

May

at 11:20 o'clock A. 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 15th day of May, 20 12

at 8:32 o'clock a M.

Ken Bennett

Secretary of State

S.B. 1186