

House Engrossed Senate Bill

**FILED**

**KEN BENNETT  
SECRETARY OF STATE**

State of Arizona  
Senate  
Fiftieth Legislature  
Second Regular Session  
2012

CHAPTER 356

# **SENATE BILL 1212**

AN ACT

AMENDING SECTION 38-1104, 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 38-1104, Arizona Revised Statutes, is amended to  
3 read:

4 38-1104. Discipline of law enforcement officers; exceptions;  
5 definitions

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

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

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

16 D. If a law enforcement officer is DEMOTED OR terminated as the result  
17 of ~~a chief of the law enforcement agency or the chief executive officer of a~~  
18 ~~city or town~~ AN EMPLOYER OR A PERSON ACTING ON BEHALF OF AN EMPLOYER  
19 reversing the decision or recommendation of a ~~civil service board or merit~~  
20 ~~commission~~ HEARING OFFICER, ADMINISTRATIVE LAW JUDGE OR APPEALS BOARD WHERE  
21 THE FINDING STATES THAT THERE WAS NO JUST CAUSE FOR THE DEMOTION OR  
22 TERMINATION, the law enforcement officer ~~who believes the termination was~~  
23 ~~without just cause~~ may bring an action in superior court for a new hearing DE  
24 NOVO on the DEMOTION OR termination. THE HEARING OFFICER, ADMINISTRATIVE LAW  
25 JUDGE OR APPEALS BOARD SHALL STATE IN EVERY FINDING OF DISCIPLINARY ACTION  
26 WHETHER OR NOT JUST CAUSE EXISTED FOR THE DISCIPLINARY ACTION.

27 E. If a law enforcement officer is DEMOTED OR terminated by ~~the chief~~  
28 ~~of the law enforcement agency or chief executive officer of a city or town~~ AN  
29 EMPLOYER OR A PERSON ACTING ON BEHALF OF AN EMPLOYER where there is ~~not a~~  
30 ~~civil service board or merit commission~~ NO HEARING OFFICER, ADMINISTRATIVE  
31 LAW JUDGE OR APPEALS BOARD to review the DEMOTION OR termination, the law  
32 enforcement officer may bring an action in superior court to review the  
33 agency's file. If the court finds from a review of the file that THERE WAS  
34 NO just cause for the DEMOTION OR termination ~~did not exist~~, the officer is  
35 entitled to a hearing on the DEMOTION OR termination.

36 F. If the superior court finds that just cause for ~~the~~ A DEMOTION OR  
37 termination did not exist, the court shall order the officer reinstated to  
38 the officer's previous position with the law enforcement agency and may award  
39 to the law enforcement officer monetary damages that shall not exceed the  
40 officer's combined total of wages and benefits DURING THE PERIOD OF IMPOSED  
41 DISCIPLINARY ACTION THAT WAS lost as a result of the DEMOTION OR termination.

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

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

4 I. For the purposes of this section:

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

8 2. "Disciplinary action" has the same meaning prescribed in section  
9 38-1101.

10 3. "Just cause" means:

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

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

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

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

24 4. "Law enforcement officer" means:

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

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

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

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

APPROVED BY THE GOVERNOR MAY 14, 2012.

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

Passed the House April 18, 2012,

Passed the Senate February 9, 2012,

by the following vote: 55 Ayes,

by the following vote: 29 Ayes,

0 Nays, 4 Not Voting  
*vacant*

0 Nays, 1 Not Voting

*L. E. McTee*  
Speaker of the House

*Steve Fierco*  
President of the Senate

*Cheryl Laube*  
Chief Clerk of the House

*Charmain 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. 1212**

**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 24, 20 12

by the following vote: 28 Ayes,

0 Nays, 2 Not Voting

Steve Fierro LV

President of the Senate

Charmine Ballington  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill received by the Governor this

1 day of May, 20 12

at 9:30 o'clock A M.

Michelle  
Secretary to the Governor

Approved this 14th day of

May

at 11:20 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 15<sup>th</sup> day of May, 20 12

at 8:32 o'clock a M.

Ken Blumett  
Secretary of State

S.B. 1212