

House Engrossed

FILED
KEN BENNETT
SECRETARY OF STATE

State of Arizona
House of Representatives
Fifty-first Legislature
First Regular Session
2013

CHAPTER 201

HOUSE BILL 2442

AN ACT

AMENDING SECTION 38-1109, ARIZONA REVISED STATUTES; RELATING TO PROBATION OFFICERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 38-1109, Arizona Revised Statutes, is amended to
3 read:

4 38-1109. Law enforcement officers; probation officers; fitness
5 for duty examinations; rights of officers;
6 definitions

7 A. An employer may order a law enforcement officer OR PROBATION
8 OFFICER to submit to a physical examination only if the LAW ENFORCEMENT
9 officer OR PROBATION OFFICER has acted or failed to act in an observable
10 manner that indicates that there is a physical condition materially limiting
11 the LAW ENFORCEMENT officer's OR PROBATION OFFICER'S ability to perform the
12 essential functions of the LAW ENFORCEMENT officer's OR PROBATION OFFICER'S
13 job within the LAW ENFORCEMENT officer's OR PROBATION OFFICER'S job
14 description. The order shall state all of the specific objective facts on
15 which the order for the physical exam is based except that the order may omit
16 the specific names of individuals who reported the LAW ENFORCEMENT officer's
17 OR PROBATION OFFICER'S conduct to the supervisor.

18 B. The order shall provide at least ten days' notice to the LAW
19 ENFORCEMENT officer OR PROBATION OFFICER to be examined and shall specify the
20 time, place, manner, conditions and scope of the examination and the person
21 or persons who will conduct the examination. The LAW ENFORCEMENT officer OR
22 PROBATION OFFICER to be examined may have a representative present during the
23 examination if the physician conducting the examination agrees.

24 C. The employer shall provide the law enforcement officer OR PROBATION
25 OFFICER with the final report of the examination containing the medical
26 professional's findings. The employer may provide any additional information
27 related to the fitness for duty examination to the examining physician.

28 D. The report shall be provided only to the employer and the law
29 enforcement officer OR PROBATION OFFICER and shall not be provided to any
30 other person except as required for any subsequent appeal or certification
31 action involving the law enforcement officer OR PROBATION OFFICER. The
32 employer shall provide notice to the LAW ENFORCEMENT officer OR PROBATION
33 OFFICER that the report has been received by the employer. The report shall
34 be provided to the LAW ENFORCEMENT officer OR PROBATION OFFICER immediately
35 if the LAW ENFORCEMENT officer OR PROBATION OFFICER presents the final report
36 of an independent medical examination or if the LAW ENFORCEMENT officer OR
37 PROBATION OFFICER waives any right to request an independent medical
38 examination. If the LAW ENFORCEMENT officer OR PROBATION OFFICER does not
39 present the results of an independent medical examination within twenty days
40 after the employer provides the LAW ENFORCEMENT officer OR PROBATION OFFICER
41 notice that the report has been received by the employer, the LAW ENFORCEMENT
42 officer OR PROBATION OFFICER is deemed to have waived the right to present
43 the results of the independent medical examination.

1 E. The employer shall make a reasonable good faith effort to deliver
2 the report to the LAW ENFORCEMENT officer OR PROBATION OFFICER.

3 F. The physician may consider and report on only the LAW ENFORCEMENT
4 officer's OR PROBATION OFFICER'S medical or other records that are directly
5 relevant to the actions in question and when conducting the examination,
6 including medical records that record preexisting conditions that are
7 relevant to the examination. The physician may additionally consider and
8 report any condition of the LAW ENFORCEMENT officer OR PROBATION OFFICER that
9 the physician identifies during the course of the physical examination and
10 that endangers the safety of the LAW ENFORCEMENT officer OR PROBATION OFFICER
11 or the community.

12 G. The employer shall not take any final action until after the law
13 enforcement officer OR PROBATION OFFICER has had at least twenty days to
14 review the report unless the LAW ENFORCEMENT officer OR PROBATION OFFICER
15 waives the twenty-day period or the employer grants an extension.

16 H. This section does not prohibit the preexamination materials from
17 being used in any proceeding held pursuant to section 38-1101.

18 I. Providing the preexamination materials to the person conducting the
19 independent examination of the law enforcement officer OR PROBATION OFFICER
20 does not change the disclosure requirements under section 38-1101.

21 J. This section does not diminish any rights of a law enforcement
22 officer OR PROBATION OFFICER that exist in this title and does not preempt
23 agreements that supplant, revise or otherwise alter the provisions of this
24 section, including preexisting agreements between employers and law
25 enforcement officers OR PROBATION OFFICERS or the law enforcement officer's
26 OR PROBATION OFFICER'S lawful representative association.

27 K. For the purposes of this section:

28 1. "Independent medical examination" means an assessment that is
29 requested by a law enforcement officer OR PROBATION OFFICER, that is
30 conducted by a physician who is licensed pursuant to title 32, chapter 13 or
31 17 and that is used to provide a second, independent opinion of a current law
32 enforcement officer OR PROBATION OFFICER who has been determined to not be
33 able to perform essential functions of the job as a result of observation and
34 a subsequent employer-ordered physical examination.

35 2. "Law enforcement officer" means:

36 (a) A regularly employed and paid individual, other than a
37 probationary employee, who is certified by the Arizona peace officer
38 standards and training board and who is working in a position requiring
39 certification by the Arizona peace officer standards and training board,
40 other than a person employed by a multi-county water conservation district,
41 an at-will employee or a voluntary or reserve employee.

42 (b) A corrections officer or detention officer, excluding a juvenile
43 detention officer, who is employed by this state or a political subdivision
44 of this state.

1 3. "Preexamination materials" means all information or materials that
2 the employer gives to the physician who conducts the physical examination and
3 that serve as the basis for the examination.

4 4. "PROBATION OFFICER" MEANS A PROBATION OFFICER OR SURVEILLANCE
5 OFFICER, OTHER THAN A PROBATIONARY EMPLOYEE, WHO IS EMPLOYED BY THIS STATE OR
6 A POLITICAL SUBDIVISION OF THIS STATE.

7 Sec. 2. Effective date

8 This act is effective from and after October 31, 2013.

APPROVED BY THE GOVERNOR MAY 8, 2013.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 8, 2013.

Passed the House February 14, 2013

Passed the Senate May 2, 2013

by the following vote: 58 Ayes,

by the following vote: 24 Ayes,

0 Nays, 2 Not Voting

0 Nays, 6 Not Voting

[Signature]
Speaker of the House

[Signature]
President of the Senate

[Signature]
Chief Clerk of the House

[Signature]
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

2 day of May, 20 13

at 3:30 o'clock P M.

[Signature]
Secretary to the Governor

Approved this 8th day of

May

at 3:59 o'clock P M.

[Signature]
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 8th day of May, 20 13

at 4:47 o'clock P M.

[Signature]
Secretary of State