

Senate Engrossed House Bill

FILED
KEN BENNETT
SECRETARY OF STATE

State of Arizona
House of Representatives
Fifty-first Legislature
Second Regular Session
2014

CHAPTER 261

HOUSE BILL 2322

AN ACT

AMENDING TITLE 13, CHAPTER 6, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-609; AMENDING SECTIONS 13-925, 13-3101, 14-5303, 14-5304, 14-5307, 32-2612, 36-509 AND 36-540, ARIZONA REVISED STATUTES; RELATING TO THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Title 13, chapter 6, Arizona Revised Statutes, is amended
3 by adding section 13-609, to read:

4 13-609. Transfer of criminal justice information; definition

5 A. IF A PERSON IS FOUND INCOMPETENT BY A COURT PURSUANT TO RULE 11,
6 ARIZONA RULES OF CRIMINAL PROCEDURE, THE COURT SHALL TRANSMIT THE CASE
7 INFORMATION AND THE DATE OF THE INCOMPETENCY FINDING TO THE SUPREME COURT.
8 THE SUPREME COURT SHALL TRANSMIT THE CASE INFORMATION AND THE DATE OF THE
9 INCOMPETENCY FINDING TO THE DEPARTMENT OF PUBLIC SAFETY. THE DEPARTMENT OF
10 PUBLIC SAFETY SHALL TRANSMIT THE CASE INFORMATION AND THE DATE OF THE
11 INCOMPETENCY FINDING TO THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK
12 SYSTEM.

13 B. IF A PERSON IS SUBSEQUENTLY FOUND COMPETENT, THE COURT SHALL
14 TRANSMIT THE CASE INFORMATION TO THE SUPREME COURT. THE SUPREME COURT SHALL
15 TRANSMIT THE FINDING OF COMPETENCY TO THE DEPARTMENT OF PUBLIC SAFETY. THE
16 DEPARTMENT OF PUBLIC SAFETY SHALL TRANSMIT THE FINDING OF COMPETENCY TO THE
17 NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM.

18 C. IF A PERSON IS FOUND GUILTY EXCEPT INSANE, THE COURT SHALL TRANSMIT
19 THE CASE INFORMATION AND THE DATE OF THE VERDICT TO THE SUPREME COURT. THE
20 SUPREME COURT SHALL TRANSMIT THE CASE INFORMATION AND THE DATE OF THE VERDICT
21 TO THE DEPARTMENT OF PUBLIC SAFETY. THE DEPARTMENT OF PUBLIC SAFETY SHALL
22 TRANSMIT THE CASE INFORMATION AND THE DATE OF THE VERDICT TO THE NATIONAL
23 INSTANT CRIMINAL BACKGROUND CHECK SYSTEM.

24 D. ON REQUEST, THE CLERK OF THE COURT THAT ORIGINALLY FOUND THE
25 DEFENDANT INCOMPETENT OR IN WHICH THE DEFENDANT WAS FOUND GUILTY EXCEPT
26 INSANE SHALL PROVIDE CERTIFIED COPIES OF THE ORDER TO A LAW ENFORCEMENT OR
27 PROSECUTING AGENCY THAT IS INVESTIGATING OR PROSECUTING A PROHIBITED
28 POSSESSOR AS DEFINED IN SECTION 13-3101.

29 E. FOR THE PURPOSES OF THIS SECTION, "CASE INFORMATION" MEANS THE
30 PERSON'S NAME, SEX AND DATE OF BIRTH, THE LAST FOUR DIGITS OF THE PERSON'S
31 SOCIAL SECURITY NUMBER, IF AVAILABLE, THE COURT CASE NUMBER AND THE COURT
32 ORIGINATING AGENCY IDENTIFICATION NUMBER.

33 Sec. 2. Section 13-925, Arizona Revised Statutes, is amended to read:

34 13-925. Restoration of right to possess a firearm; mentally ill
35 persons; petition

36 A. A person may petition the court that entered an order, finding or
37 adjudication that resulted in the person being a prohibited possessor as
38 defined in section 13-3101, subsection A, paragraph 7, subdivision (a) or
39 subject to 18 United States Code section 922(d)(4) or (g)(4) to restore the
40 person's right to possess a firearm.

41 B. The person or the person's guardian or attorney may file the
42 petition. The petition shall be served on the attorney for the state who
43 appeared in the underlying case.

44 C. On THE filing of the petition the court shall set a hearing. At
45 the hearing, the person shall present psychological or psychiatric evidence

1 in support of the petition. The state shall provide the court with the
2 person's criminal history records, if any. The court shall receive evidence
3 on and consider the following before granting or denying the petition:

4 1. The circumstances that resulted in the person being a prohibited
5 possessor as defined in section 13-3101, subsection A, paragraph 7,
6 subdivision (a) or subject to 18 United States Code section 922(d)(4) or
7 (g)(4).

8 2. The person's record, including the person's mental health record
9 and criminal history record, if any.

10 3. The person's reputation based on character witness statements,
11 testimony or other character evidence.

12 4. Whether the person is a danger to self or others, ~~OR~~ is
13 persistently, acutely or gravely disabled or whether the circumstances that
14 led to the original order, adjudication or finding remain in effect.

15 5. Any change in the person's condition or circumstances that is
16 relevant to the relief sought.

17 6. Any other evidence deemed admissible by the court.

18 D. The petitioner shall prove by clear and convincing evidence both of
19 the following:

20 1. The petitioner is not likely to act in a manner that is dangerous
21 to public safety.

22 2. Granting the requested relief is not contrary to the public
23 interest.

24 E. At the conclusion of the hearing, the court shall issue findings of
25 fact and conclusions of law.

26 F. If the court grants the petition for relief, the original order,
27 finding or adjudication is deemed not to have occurred for the purposes of
28 applying section 13-3101, subsection A, paragraph 7, subdivision (a), Public
29 Law 110-180, section 105(a) or 18 United States Code section 922(d)(4) or
30 (g)(4) to that person.

31 G. The granting of a petition under this section only restores the
32 person's right to possess a firearm and does not apply to and has no ~~effect~~
33 EFFECT on any other rights or benefits the person receives.

34 H. The court shall promptly notify the SUPREME COURT AND THE
35 department of public safety of an order granting a petition under this
36 section. As soon thereafter as practicable the SUPREME COURT AND THE
37 department shall update, correct, modify or remove the person's record in any
38 database that the SUPREME COURT OR THE department maintains and makes
39 available to the national instant criminal background check system consistent
40 with the rules pertaining to the database. Within ten business days after
41 receiving the notification from the court, the department shall notify the
42 United States attorney general that the person no longer falls within the
43 provisions of section 13-3101, subsection A, paragraph 7, subdivision (a) or
44 18 United States Code section 922(d)(4) or (g)(4).

1 Sec. 3. Section 13-3101, Arizona Revised Statutes, is amended to read:
2 13-3101. Definitions

3 A. In this chapter, unless the context otherwise requires:

4 1. "Deadly weapon" means anything that is designed for lethal use.
5 The term includes a firearm.

6 2. "Deface" means to remove, alter or destroy the manufacturer's
7 serial number.

8 3. "Explosive" means any dynamite, nitroglycerine, black powder, or
9 other similar explosive material, including plastic explosives. Explosive
10 does not include ammunition or ammunition components such as primers,
11 percussion caps, smokeless powder, black powder and black powder substitutes
12 used for hand loading purposes.

13 4. "Firearm" means any loaded or unloaded handgun, pistol, revolver,
14 rifle, shotgun or other weapon that will expel, is designed to expel or may
15 readily be converted to expel a projectile by the action of an explosive.
16 Firearm does not include a firearm in permanently inoperable condition.

17 5. "Improvised explosive device" means a device that incorporates
18 explosives or destructive, lethal, noxious, pyrotechnic or incendiary
19 chemicals and that is designed to destroy, disfigure, terrify or harass.

20 6. "Occupied structure" means any building, object, vehicle,
21 watercraft, aircraft or place with sides and a floor that is separately
22 securable from any other structure attached to it, that is used for lodging,
23 business, transportation, recreation or storage and in which one or more
24 human beings either are or are likely to be present or so near as to be in
25 equivalent danger at the time the discharge of a firearm occurs. Occupied
26 structure includes any dwelling house, whether occupied, unoccupied or
27 vacant.

28 7. "Prohibited possessor" means any person:

29 (a) Who has been found to constitute a danger to self or to others or
30 to be persistently or acutely disabled or gravely disabled pursuant to court
31 order ~~under~~ PURSUANT TO section 36-540, and whose right to possess a firearm
32 has not been restored pursuant to section 13-925.

33 (b) Who has been convicted within or without this state of a felony or
34 who has been adjudicated delinquent for a felony and whose civil right to
35 possess or carry a gun or firearm has not been restored.

36 (c) Who is at the time of possession serving a term of imprisonment in
37 any correctional or detention facility.

38 (d) Who is at the time of possession serving a term of probation
39 pursuant to a conviction for a domestic violence offense as defined in
40 section 13-3601 or a felony offense, parole, community supervision, work
41 furlough, home arrest or release on any other basis or who is serving a term
42 of probation or parole pursuant to the interstate compact under title 31,
43 chapter 3, article 4.1.

44 (e) Who is an undocumented alien or a nonimmigrant alien traveling
45 with or without documentation in this state for business or pleasure or who

1 is studying in this state and who maintains a foreign residence abroad. This
2 subdivision does not apply to:

3 (i) Nonimmigrant aliens who possess a valid hunting license or permit
4 that is lawfully issued by a state in the United States.

5 (ii) Nonimmigrant aliens who enter the United States to participate in
6 a competitive target shooting event or to display firearms at a sports or
7 hunting trade show that is sponsored by a national, state or local firearms
8 trade organization devoted to the competitive use or other sporting use of
9 firearms.

10 (iii) Certain diplomats.

11 (iv) Officials of foreign governments or distinguished foreign
12 visitors who are designated by the United States department of state.

13 (v) Persons who have received a waiver from the United States attorney
14 general.

15 (f) WHO HAS BEEN FOUND INCOMPETENT PURSUANT TO RULE 11, ARIZONA RULES
16 OF CRIMINAL PROCEDURE, AND WHO SUBSEQUENTLY HAS NOT BEEN FOUND COMPETENT.

17 (g) WHO IS FOUND GUILTY EXCEPT INSANE.

18 8. "Prohibited weapon":

19 (a) Includes the following:

20 (i) An item that is a bomb, grenade, rocket having a propellant charge
21 of more than four ounces or mine and that is explosive, incendiary or poison
22 gas.

23 (ii) A device that is designed, made or adapted to muffle the report
24 of a firearm.

25 (iii) A firearm that is capable of shooting more than one shot
26 automatically, without manual reloading, by a single function of the trigger.

27 (iv) A rifle with a barrel length of less than sixteen inches, or
28 shotgun with a barrel length of less than eighteen inches, or any firearm
29 that is made from a rifle or shotgun and that, as modified, has an overall
30 length of less than twenty-six inches.

31 (v) An instrument, including a nunchaku, that consists of two or more
32 sticks, clubs, bars or rods to be used as handles, connected by a rope, cord,
33 wire or chain, in the design of a weapon used in connection with the practice
34 of a system of self-defense.

35 (vi) A breakable container that contains a flammable liquid with a
36 flash point of one hundred fifty degrees Fahrenheit or less and that has a
37 wick or similar device capable of being ignited.

38 (vii) A chemical or combination of chemicals, compounds or materials,
39 including dry ice, that is possessed or manufactured for the purpose of
40 generating a gas to cause a mechanical failure, rupture or bursting or an
41 explosion or detonation of the chemical or combination of chemicals,
42 compounds or materials.

43 (viii) An improvised explosive device.

1 (ix) Any combination of parts or materials that is designed and
2 intended for use in making or converting a device into an item set forth in
3 item (i), (vi) or (viii) of this subdivision.

4 (b) Does not include:

5 (i) Any fireworks that are imported, distributed or used in compliance
6 with state laws or local ordinances.

7 (ii) Any propellant, propellant actuated devices or propellant
8 actuated industrial tools that are manufactured, imported or distributed for
9 their intended purposes.

10 (iii) A device that is commercially manufactured primarily for the
11 purpose of illumination.

12 9. "Trafficking" means to sell, transfer, distribute, dispense or
13 otherwise dispose of a weapon or explosive to another person, or to buy,
14 receive, possess or obtain control of a weapon or explosive, with the intent
15 to sell, transfer, distribute, dispense or otherwise dispose of the weapon or
16 explosive to another person.

17 B. The items set forth in subsection A, paragraph 8, subdivision (a),
18 items (i), (ii), (iii) and (iv) of this section do not include any firearms
19 or devices that are registered in the national firearms registry and transfer
20 records of the United States treasury department or any firearm that has been
21 classified as a curio or relic by the United States treasury department.

22 Sec. 4. Section 14-5303, Arizona Revised Statutes, is amended to read:
23 14-5303. Procedure for court appointment of a guardian of an
24 alleged incapacitated person

25 A. The alleged incapacitated person or any person interested in that
26 person's affairs or welfare may petition for the appointment of a guardian or
27 for any other appropriate protective order.

28 B. The petition shall contain a statement that the authority granted
29 to the guardian may include the authority to withhold or withdraw life
30 sustaining treatment, including artificial food and fluid, and shall state,
31 at a minimum and to the extent known, all of the following:

32 1. The interest of the petitioner.

33 2. The name, age, residence and address of the alleged incapacitated
34 person.

35 3. The name, address and priority for appointment of the person whose
36 appointment is sought.

37 4. The name and address of the conservator, if any, of the alleged
38 incapacitated person.

39 5. The name and address of the nearest relative of the alleged
40 incapacitated person known to the petitioner.

41 6. A general statement of the property of the alleged incapacitated
42 person, with an estimate of its value and including any compensation,
43 insurance, pension or allowance to which the person is entitled.

44 7. The reason why appointment of a guardian or any other protective
45 order is necessary.

1 8. The type of guardianship requested. If a general guardianship is
2 requested, the petition must state that other alternatives have been explored
3 and why a limited guardianship is not appropriate. If a limited guardianship
4 is requested, the petition also must state what specific powers are
5 requested.

6 9. If a custodial order was previously entered regarding an alleged
7 incapacitated person in a child custody action or similar proceeding in this
8 state or another jurisdiction and the petitioner or proposed guardian is a
9 parent or nonparent custodian of the alleged incapacitated person, the court
10 and case number for that action or proceeding.

11 10. IF THE APPOINTMENT OF A GUARDIAN IS NECESSARY DUE SOLELY TO THE
12 PHYSICAL INCAPACITY OF THE ALLEGED INCAPACITATED PERSON.

13 C. On the filing of a petition, the court shall set a hearing date on
14 the issues of incapacity. Unless the alleged incapacitated person is
15 represented by independent counsel, the court shall appoint an attorney to
16 represent that person in the proceeding. The alleged incapacitated person
17 shall be interviewed by an investigator appointed by the court and shall be
18 examined by a physician, psychologist or registered nurse appointed by the
19 court. If the alleged incapacitated person has an established relationship
20 with a physician, psychologist or registered nurse who is determined by the
21 court to be qualified to evaluate the capacity of the alleged incapacitated
22 person, the court may appoint the alleged incapacitated person's physician,
23 psychologist or registered nurse pursuant to this subsection. The
24 investigator and the person conducting the examination shall submit their
25 reports in writing to the court. In addition to information required under
26 subsection D, the court may direct that either report include other
27 information the court deems appropriate. The investigator also shall
28 interview the person seeking appointment as guardian, visit the present place
29 of abode of the alleged incapacitated person and the place where it is
30 proposed that the person will be detained or reside if the requested
31 appointment is made and submit a report in writing to the court. The alleged
32 incapacitated person is entitled to be present at the hearing and to see or
33 hear all evidence bearing on that person's condition. The alleged
34 incapacitated person is entitled to be represented by counsel, to present
35 evidence, to cross-examine witnesses, including the court-appointed examiner
36 and investigator, and to trial by jury. The court may determine the issue at
37 a closed hearing if the alleged incapacitated person or that person's counsel
38 so requests.

39 D. A report filed pursuant to this section by a physician,
40 psychologist or registered nurse acting within that person's scope of
41 practice shall include the following information:

42 1. A specific description of the physical, psychiatric or
43 psychological diagnosis of the person.

44 2. A comprehensive assessment listing any functional impairments of
45 the alleged incapacitated person and an explanation of how and to what extent

1 these functional impairments may prevent that person from receiving or
2 evaluating information in making decisions or in communicating informed
3 decisions regarding that person.

4 3. An analysis of the tasks of daily living the alleged incapacitated
5 person is capable of performing without direction or with minimal direction.

6 4. A list of all medications the alleged incapacitated person is
7 receiving, the dosage of the medications and a description of the effects
8 each medication has on the person's behavior to the best of the declarant's
9 knowledge.

10 5. A prognosis for improvement in the alleged incapacitated person's
11 condition and a recommendation for the most appropriate rehabilitation plan
12 or care plan.

13 6. Other information the physician, psychologist or registered nurse
14 deems appropriate.

15 Sec. 5. Section 14-5304, Arizona Revised Statutes, is amended to read:
16 14-5304. Findings; limitations; filing; fingerprinting

17 A. In exercising its appointment authority pursuant to this chapter,
18 the court shall encourage the development of maximum self-reliance and
19 independence of the incapacitated person.

20 B. The court may appoint a general or limited guardian as requested if
21 the court finds by clear and convincing evidence that:

22 1. The person for whom a guardian is sought is incapacitated.

23 2. The appointment is necessary to provide for the demonstrated needs
24 of the incapacitated person.

25 3. The person's needs cannot be met by less restrictive means,
26 including the use of appropriate technological assistance.

27 C. In conformity with the evidence regarding the extent of the ward's
28 incapacity, the court may appoint a limited guardian and specify time limits
29 on the guardianship and limitations on the guardian's powers.

30 D. The guardian shall file an acceptance of appointment with the
31 appointing court.

32 E. The court may require each person who seeks appointment as a
33 guardian to furnish a full set of fingerprints to enable the court to conduct
34 a criminal background investigation. The court shall submit the person's
35 completed fingerprint card to the department of public safety. The person
36 shall bear the cost of obtaining the person's criminal history record
37 information. The cost shall not exceed the actual cost of obtaining the
38 person's criminal history record information. Criminal history records
39 checks shall be conducted pursuant to section 41-1750 and Public Law 92-544.
40 The department of public safety may exchange this fingerprint data with the
41 federal bureau of investigation. This subsection does not apply to a
42 fiduciary who is licensed pursuant to section 14-5651 or an employee of a
43 financial institution.

44 F. THE COURT SHALL MAKE A SPECIFIC FINDING AS TO WHETHER THE
45 APPOINTMENT OF A GUARDIAN IS DUE SOLELY TO THE WARD'S PHYSICAL INCAPACITY.

1 G. UNLESS THE COURT MAKES A SPECIFIC FINDING THAT THE APPOINTMENT OF A
2 GUARDIAN IS DUE SOLELY TO THE WARD'S PHYSICAL INCAPACITY UNDER SUBSECTION F
3 OF THIS SECTION, AT THE TIME OF APPOINTING A GUARDIAN, THE COURT SHALL
4 TRANSMIT THE WARD'S NAME, SEX AND DATE OF BIRTH, THE LAST FOUR DIGITS OF THE
5 WARD'S SOCIAL SECURITY NUMBER, IF AVAILABLE, THE COURT CASE NUMBER, THE COURT
6 ORIGINATING AGENCY IDENTIFICATION NUMBER AND THE DATE OF THE GUARDIAN'S
7 APPOINTMENT TO THE SUPREME COURT. THE SUPREME COURT SHALL TRANSMIT THE
8 INFORMATION TO THE DEPARTMENT OF PUBLIC SAFETY. THE DEPARTMENT OF PUBLIC
9 SAFETY SHALL TRANSMIT THE INFORMATION TO THE NATIONAL INSTANT CRIMINAL
10 BACKGROUND CHECK SYSTEM.

11 Sec. 6. Section 14-5307, Arizona Revised Statutes, is amended to read:
12 14-5307. Substitution or resignation of guardian; termination
13 of incapacity

14 A. On petition of the ward or any person interested in the ward's
15 welfare, or on the court's own initiative, the court shall substitute a
16 guardian and appoint a successor if it is in the best interest of the ward.
17 The court does not need to find that the guardian acted inappropriately to
18 find that the substitution is in the ward's best interest. The guardian and
19 the guardian's attorney may be compensated from the ward's estate for
20 defending against a petition for substitution only for the amount ordered by
21 the court and on petition by the guardian or the guardian's attorney. When
22 substituting a guardian and appointing a successor, the court may appoint an
23 individual nominated by the ward if the ward is at least fourteen years of
24 age and has, in the opinion of the court, sufficient mental capacity to make
25 an intelligent choice. On petition of the guardian, the court may accept a
26 resignation and make any other order that may be appropriate.

27 B. The ward may petition the court for an order that the ward is no
28 longer incapacitated or petition for substitution of the guardian at any
29 time. A request for this order may be made by informal letter to the court
30 or judge. A person who knowingly interferes with the transmission of this
31 request may be found in contempt of court.

32 C. An interested person, other than the guardian or ward, shall not
33 file a petition for adjudication that the ward is no longer incapacitated
34 earlier than one year after the order adjudicating incapacity was entered
35 unless the court permits it to be made on the basis of affidavits that there
36 is reason to believe that the ward is no longer incapacitated.

37 D. An interested person, other than the guardian or ward, shall not
38 file a petition to substitute a guardian earlier than one year after the
39 order adjudicating incapacity was entered unless the court permits it to be
40 made on the basis of affidavits that there is reason to believe that the
41 current guardian will endanger the ward's physical, mental or emotional
42 health if not substituted.

43 E. Before substituting a guardian, accepting the resignation of a
44 guardian or ordering that a ward's incapacity has terminated, the court,
45 following the same procedures to safeguard the rights of the ward as apply to

1 a petition for appointment of a guardian, may send an investigator to the
2 residence of the present guardian and to the place where the ward resides or
3 is detained to observe conditions and report in writing to the court.

4 F. ON TERMINATION OF THE INCAPACITY, THE SUPREME COURT SHALL TRANSMIT
5 THE ORDER TERMINATING THE INCAPACITY TO THE DEPARTMENT OF PUBLIC SAFETY. THE
6 DEPARTMENT OF PUBLIC SAFETY SHALL TRANSMIT THE INFORMATION TO THE NATIONAL
7 INSTANT CRIMINAL BACKGROUND CHECK SYSTEM.

8 Sec. 7. Section 32-2612, Arizona Revised Statutes, is amended to read:
9 32-2612. Qualifications of applicant for agency license;

10 substantiation of work experience

11 A. Each applicant, if an individual, or each associate, director or
12 manager, if the applicant is other than an individual, for an agency license
13 to be issued pursuant to this chapter shall:

14 1. Be at least twenty-one years of age.

15 2. Be a citizen or a legal resident of the United States who is
16 authorized to seek employment in the United States.

17 3. Not have been convicted of any felony or currently be under
18 indictment for a felony.

19 4. Within the five years immediately preceding the application for an
20 agency license, not have been convicted of any misdemeanor act involving:

21 (a) Personal violence or force against another person or threatening
22 to commit any act of personal violence or force against another person.

23 (b) Misconduct involving a deadly weapon as provided in section
24 13-3102.

25 (c) Dishonesty or fraud.

26 (d) Arson.

27 (e) Theft.

28 (f) Domestic violence.

29 (g) A violation of title 13, chapter 34 or 34.1 or an offense that has
30 the same elements as an offense listed in title 13, chapter 34 or 34.1.

31 (h) Sexual misconduct.

32 5. Not be on parole, on community supervision, on work furlough, on
33 home arrest, on release on any other basis or named in an outstanding arrest
34 warrant.

35 6. Not be serving a term of probation pursuant to a conviction for any
36 act of personal violence or domestic violence, as defined in section 13-3601,
37 or an offense that has the same elements as an offense listed in section
38 13-3601.

39 7. Not be ~~either~~ ANY of the following:

40 (a) Adjudicated mentally incompetent.

41 (b) Found to constitute a danger to self or others or to be
42 persistently or acutely disabled or gravely disabled pursuant to section
43 36-540.

44 (c) FOUND INCOMPETENT PURSUANT TO RULE 11, ARIZONA RULES OF CRIMINAL
45 PROCEDURE.

1 (d) FOUND GUILTY EXCEPT INSANE.

2 8. Not have a disability as defined in section 41-1461, unless that
3 person is a qualified individual as defined in section 41-1461.

4 9. Not have been convicted of acting or attempting to act as a
5 security guard or a security guard agency without a license if a license was
6 required.

7 10. Not be a registered sex offender.

8 B. The qualifying party for an agency license and the resident
9 manager, if a resident manager is required pursuant to section 32-2616, shall
10 have at least three years of full-time experience as a manager, supervisor or
11 administrator of a security guard agency or three years of full-time
12 supervisory experience with any federal, United States military, state,
13 county or municipal law enforcement agency. The qualifying party for an
14 agency license and the resident manager, if a resident manager is required
15 pursuant to section 32-2616, must substantiate managerial work experience
16 claimed as years of qualifying experience and provide the exact details as to
17 the character and nature of the experience on a form prescribed by the
18 department and certified by the employer. On written request, an employer
19 shall submit to the employee a written certification of prior work experience
20 within thirty calendar days. The written certification is subject to
21 independent verification by the department. If an employer goes out of
22 business, the employer shall provide registered employees with a complete and
23 accurate record of their work history. If an applicant is unable to supply
24 written certification from an employer in whole or in part, the applicant may
25 offer written certification from persons other than an employer covering the
26 same subject matter for consideration by the department. The burden of
27 proving the minimum years of experience is on the applicant.

28 C. The department may deny an agency license if the department
29 determines that the applicant is unfit based on a conviction, citation or
30 encounter with law enforcement for a statutory violation.

31 Sec. 8. Section 36-509, Arizona Revised Statutes, is amended to read:

32 36-509. Confidential records; immunity

33 A. A health care entity must keep records and information contained in
34 records confidential and not as public records, except as provided in this
35 section. Records and information contained in records may only be disclosed
36 to:

37 1. Physicians and providers of health, mental health or social and
38 welfare services involved in caring for, treating or rehabilitating the
39 patient.

40 2. Individuals to whom the patient or the patient's health care
41 decision maker has given authorization to have information disclosed.

42 3. Persons authorized by a court order.

43 4. Persons doing research only if the activity is conducted pursuant
44 to applicable federal or state laws and regulations governing research.

1 5. The state department of corrections in cases in which prisoners
2 confined to the state prison are patients in the state hospital on authorized
3 transfers either by voluntary admission or by order of the court.

4 6. Governmental or law enforcement agencies if necessary to:

5 (a) Secure the return of a patient who is on unauthorized absence from
6 any agency where the patient was undergoing evaluation and treatment.

7 (b) Report a crime on the premises.

8 (c) Avert a serious and imminent threat to an individual or the
9 public.

10 7. Persons, including family members, actively participating in the
11 patient's care, treatment or supervision. A health care provider may only
12 release information relating to the patient's diagnosis, prognosis, need for
13 hospitalization, anticipated length of stay, discharge plan, medication,
14 medication side effects and short-term and long-term treatment goals. A
15 health care provider may make this release only after the treating
16 professional or that person's designee interviews the patient or the
17 patient's health care decision maker and the patient or the patient's health
18 care decision maker does not object, unless federal or state law permits the
19 disclosure. If the patient does not have the opportunity to object to the
20 disclosure because of incapacity or an emergency circumstance and the
21 patient's health care decision maker is not available to object to the
22 release, the health care provider in the exercise of professional judgment
23 may determine if the disclosure is in the best interests of the patient and,
24 if so, may release the information authorized pursuant to this paragraph. A
25 decision to release or withhold information is subject to review pursuant to
26 section 36-517.01. The health care provider must record the name of any
27 person to whom any information is given under this paragraph.

28 8. A state agency that licenses health professionals pursuant to title
29 32, chapter 13, 15, 17, 19.1 or 33 and that requires these records in the
30 course of investigating complaints of professional negligence, incompetence
31 or lack of clinical judgment.

32 9. A state or federal agency that licenses health care providers.

33 10. A governmental agency or a competent professional, as defined in
34 section 36-3701, in order to comply with chapter 37 of this title.

35 11. Human rights committees established pursuant to title 41,
36 chapter 35. Any information released pursuant to this paragraph shall comply
37 with the requirements of section 41-3804 and applicable federal law and shall
38 be released without personally identifiable information unless the personally
39 identifiable information is required for the official purposes of the human
40 rights committee. Case information received by a human rights committee
41 shall be maintained as confidential. For the purposes of this paragraph,
42 "personally identifiable information" includes a person's name, address, date
43 of birth, social security number, tribal enrollment number, telephone or
44 telefacsimile number, driver license number, places of employment, school

1 identification number and military identification number or any other
2 distinguishing characteristic that tends to identify a particular person.

3 12. A patient or the patient's health care decision maker pursuant to
4 section 36-507.

5 13. The department of public safety OR ANOTHER LAW ENFORCEMENT AGENCY
6 by the court to comply with the requirements of section 36-540, ~~subsection~~
7 SUBSECTIONS O AND P.

8 14. A third party payor or the payor's contractor as permitted by the
9 health insurance portability and accountability act privacy standards, 45
10 Code of Federal Regulations part 160 and part 164, subpart E.

11 15. A private entity that accredits the health care provider and with
12 whom the health care provider has an agreement requiring the agency to
13 protect the confidentiality of patient information.

14 16. The legal representative of a health care entity in possession of
15 the record for the purpose of securing legal advice.

16 17. A person or entity as otherwise required by state or federal law.

17 18. A person or entity as permitted by the federal regulations on
18 alcohol and drug abuse treatment (42 Code of Federal Regulations part 2).

19 19. A person or entity to conduct utilization review, peer review and
20 quality assurance pursuant to section 36-441, 36-445, 36-2402 or 36-2917.

21 20. A person maintaining health statistics for public health purposes
22 as authorized by law.

23 21. A grand jury as directed by subpoena.

24 22. A person or entity that provides services to the patient's health
25 care provider, as defined in section 12-2291, and with whom the health care
26 provider has a business associate agreement that requires the person or
27 entity to protect the confidentiality of patient information as required by
28 the health insurance portability and accountability act privacy standards, 45
29 Code of Federal Regulations part 164, subpart E.

30 B. Information and records obtained in the course of evaluation,
31 examination or treatment and submitted in any court proceeding pursuant to
32 this chapter or title 14, chapter 5 are confidential and are not public
33 records unless the hearing requirements of this chapter or title 14, chapter
34 5 require a different procedure. Information and records that are obtained
35 pursuant to this section and submitted in a court proceeding pursuant to
36 title 14, chapter 5 and that are not clearly identified by the parties as
37 confidential and segregated from nonconfidential information and records are
38 considered public records.

39 C. Notwithstanding subsections A and B of this section, the legal
40 representative of a patient who is the subject of a proceeding conducted
41 pursuant to this chapter and title 14, chapter 5 has access to the patient's
42 information and records in the possession of a health care entity or filed
43 with the court.

1 D. A health care entity that acts in good faith under this article is
2 not liable for damages in any civil action for the disclosure of records or
3 payment records that is made pursuant to this article or as otherwise
4 provided by law. The health care entity is presumed to have acted in good
5 faith. This presumption may be rebutted by clear and convincing evidence.

6 Sec. 9. Section 36-540, Arizona Revised Statutes, is amended to read:

7 36-540. Court options

8 A. If the court finds by clear and convincing evidence that the
9 proposed patient, as a result of mental disorder, is a danger to self, is a
10 danger to others, is persistently or acutely disabled or is gravely disabled
11 and in need of treatment, and is either unwilling or unable to accept
12 voluntary treatment, the court shall order the patient to undergo one of the
13 following:

14 1. Treatment in a program of outpatient treatment.

15 2. Treatment in a program consisting of combined inpatient and
16 outpatient treatment.

17 3. Inpatient treatment in a mental health treatment agency, in a
18 hospital operated by or under contract with the United States department of
19 veterans affairs to provide treatment to eligible veterans pursuant to
20 article 9 of this chapter, in the state hospital or in a private hospital, if
21 the private hospital agrees, subject to the limitations of section 36-541.

22 B. The court shall consider all available and appropriate alternatives
23 for the treatment and care of the patient. The court shall order the least
24 restrictive treatment alternative available.

25 C. The court may order the proposed patient to undergo outpatient or
26 combined inpatient and outpatient treatment pursuant to subsection A,
27 paragraph 1 or 2 of this section if the court:

28 1. Determines that all of the following apply:

29 (a) The patient does not require continuous inpatient hospitalization.

30 (b) The patient will be more appropriately treated in an outpatient
31 treatment program or in a combined inpatient and outpatient treatment
32 program.

33 (c) The patient will follow a prescribed outpatient treatment plan.

34 (d) The patient will not likely become dangerous or suffer more
35 serious physical harm or serious illness or further deterioration if the
36 patient follows a prescribed outpatient treatment plan.

37 2. Is presented with and approves a written treatment plan that
38 conforms with the requirements of section 36-540.01, subsection B. If the
39 treatment plan presented to the court pursuant to this subsection provides
40 for supervision of the patient under court order by a mental health agency
41 that is other than the mental health agency that petitioned or requested the
42 county attorney to petition the court for treatment pursuant to section
43 36-531, the treatment plan must be approved by the medical director of the
44 mental health agency that will supervise the treatment pursuant to subsection
45 E of this section.

1 D. An order to receive treatment pursuant to subsection A, paragraph 1
2 or 2 of this section shall not exceed three hundred sixty-five days. The
3 period of inpatient treatment under a combined treatment order pursuant to
4 subsection A, paragraph 2 of this section shall not exceed the maximum period
5 allowed for an order for inpatient treatment pursuant to subsection F of this
6 section.

7 E. If the court enters an order for treatment pursuant to subsection
8 A, paragraph 1 or 2 of this section, all of the following apply:

9 1. The court shall designate the medical director of the mental health
10 treatment agency that will supervise and administer the patient's treatment
11 program.

12 2. The medical director shall not use the services of any person,
13 agency or organization to supervise a patient's outpatient treatment program
14 unless the person, agency or organization has agreed to provide these
15 services in the individual patient's case and unless the department has
16 determined that the person, agency or organization is capable and competent
17 to do so.

18 3. The person, agency or organization assigned to supervise an
19 outpatient treatment program or the outpatient portion of a combined
20 treatment program shall be notified at least three days before a referral.
21 The medical director making the referral and the person, agency or
22 organization assigned to supervise the treatment program shall share relevant
23 information about the patient to provide continuity of treatment.

24 4. During any period of outpatient treatment under subsection A,
25 paragraph 2 of this section, if the court, on motion by the medical director
26 of the patient's outpatient mental health treatment facility, determines that
27 the patient is not complying with the terms of the order or that the
28 outpatient treatment plan is no longer appropriate and the patient needs
29 inpatient treatment, the court, without a hearing and based on the court
30 record, the patient's medical record, the affidavits and recommendations of
31 the medical director, and the advice of staff and physicians or the
32 psychiatric and mental health nurse practitioner familiar with the treatment
33 of the patient, may enter an order amending its original order. The amended
34 order may alter the outpatient treatment plan or order the patient to
35 inpatient treatment pursuant to subsection A, paragraph 3 of this section.
36 The amended order shall not increase the total period of commitment
37 originally ordered by the court or, when added to the period of inpatient
38 treatment provided by the original order and any other amended orders, exceed
39 the maximum period allowed for an order for inpatient treatment pursuant to
40 subsection F of this section. If the patient refuses to comply with an
41 amended order for inpatient treatment, the court may authorize and direct a
42 peace officer, on the request of the medical director, to take the patient
43 into protective custody and transport the patient to the agency for inpatient
44 treatment. When reporting to or being returned to a treatment agency for
45 inpatient treatment pursuant to an amended order, the patient shall be

1 informed of the patient's right to judicial review and the patient's right to
2 consult with counsel pursuant to section 36-546.

3 5. During any period of outpatient treatment under subsection A,
4 paragraph 2 of this section, if the medical director of the outpatient
5 treatment facility in charge of the patient's care determines, in concert
6 with the medical director of an inpatient mental health treatment facility
7 who has agreed to accept the patient, that the patient is in need of
8 immediate acute inpatient psychiatric care because of behavior that is
9 dangerous to self or to others, the medical director of the outpatient
10 treatment facility may order a peace officer to apprehend and transport the
11 patient to the inpatient treatment facility pending a court determination on
12 an amended order under paragraph 4 of this subsection. The patient may be
13 detained and treated at the inpatient treatment facility for a period of no
14 more than forty-eight hours, exclusive of weekends and holidays, from the
15 time that the patient is taken to the inpatient treatment facility. The
16 medical director of the outpatient treatment facility shall file the motion
17 for an amended court order requesting inpatient treatment no later than the
18 next working day following the patient being taken to the inpatient treatment
19 facility. Any period of detention within the inpatient treatment facility
20 pending issuance of an amended order shall not increase the total period of
21 commitment originally ordered by the court or, when added to the period of
22 inpatient treatment provided by the original order and any other amended
23 orders, exceed the maximum period allowed for an order for inpatient
24 treatment pursuant to subsection F of this section. If a patient is ordered
25 to undergo inpatient treatment pursuant to an amended order, the medical
26 director of the outpatient treatment facility shall inform the patient of the
27 patient's right to judicial review and to consult with an attorney pursuant
28 to section 36-546.

29 F. The maximum periods of inpatient treatment that the court may
30 order, subject to the limitations of section 36-541, are as follows:

- 31 1. Ninety days for a person found to be a danger to self.
- 32 2. One hundred eighty days for a person found to be a danger to
33 others.
- 34 3. One hundred eighty days for a person found to be persistently or
35 acutely disabled.
- 36 4. Three hundred sixty-five days for a person found to be gravely
37 disabled.

38 G. If, on finding that the patient meets the criteria for
39 court-ordered treatment pursuant to subsection A of this section, the court
40 also finds that there is reasonable cause to believe that the patient is an
41 incapacitated person as defined in section 14-5101 or is a person in need of
42 protection pursuant to section 14-5401 and that the patient is or may be in
43 need of guardianship or conservatorship, or both, the court may order an
44 investigation concerning the need for a guardian or conservator, or both, and
45 may appoint a suitable person or agency to conduct the investigation. The

1 appointee may include a court appointed guardian ad litem, an investigator
2 appointed pursuant to section 14-5308 or the public fiduciary if there is no
3 person willing and qualified to act in that capacity. The court shall give
4 notice of the appointment to the appointee within three days of the
5 appointment. The appointee shall submit the report of the investigation to
6 the court within twenty-one days. The report shall include recommendations
7 as to who should be guardian or who should be conservator, or both, and a
8 report of the findings and reasons for the recommendation. If the
9 investigation and report so indicate, the court shall order the appropriate
10 person to submit a petition to become the guardian or conservator, or both,
11 of the patient.

12 H. In any proceeding for court-ordered treatment in which the petition
13 alleges that the patient is in need of a guardian or conservator and states
14 the grounds for that allegation, the court may appoint an emergency temporary
15 guardian or conservator, or both, for a specific purpose or purposes
16 identified in its order and for a specific period of time not to exceed
17 thirty days if the court finds that all of the following are true:

18 1. The patient meets the criteria for court-ordered treatment pursuant
19 to subsection A of this section.

20 2. There is reasonable cause to believe that the patient is an
21 incapacitated person as defined in section 14-5101 or is in need of
22 protection pursuant to section 14-5401, paragraph 2.

23 3. The patient does not have a guardian or conservator and the welfare
24 of the patient requires immediate action to protect the patient or the ward's
25 property.

26 4. The conditions prescribed pursuant to section 14-5310, subsection B
27 or section 14-5401.01, subsection B have been met.

28 I. The court may appoint as a temporary guardian or conservator
29 pursuant to subsection H of this section a suitable person or the public
30 fiduciary if there is no person qualified and willing to act in that
31 capacity. The court shall issue an order for an investigation as prescribed
32 pursuant to subsection G of this section and, unless the patient is
33 represented by independent counsel, the court shall appoint an attorney to
34 represent the patient in further proceedings regarding the appointment of a
35 guardian or conservator. The court shall schedule a further hearing within
36 fourteen days on the appropriate court calendar of a court that has authority
37 over guardianship or conservatorship matters pursuant to this title to
38 consider the continued need for an emergency temporary guardian or
39 conservator and the appropriateness of the temporary guardian or conservator
40 appointed, and shall order the appointed guardian or conservator to give
41 notice to persons entitled to notice pursuant to section 14-5309, subsection
42 A or section 14-5405, subsection A. The court shall authorize certified
43 letters of temporary emergency guardianship or conservatorship to be issued
44 on presentation of a copy of the court's order. If a temporary emergency
45 conservator other than the public fiduciary is appointed pursuant to this

1 subsection, the court shall order that the use of the money and property of
2 the patient by the conservator is restricted and not to be sold, used,
3 transferred or encumbered, except that the court may authorize the
4 conservator to use money or property of the patient specifically identified
5 as needed to pay an expense to provide for the care, treatment or welfare of
6 the patient pending further hearing. This subsection and subsection H of
7 this section do not:

8 1. Prevent the evaluation or treatment agency from seeking
9 guardianship and conservatorship in any other manner allowed by law at any
10 time during the period of court-ordered evaluation and treatment.

11 2. Relieve the evaluation or treatment agency from its obligations
12 concerning the suspected abuse of a vulnerable adult pursuant to title 46,
13 chapter 4.

14 J. If, on finding that a patient meets the criteria for court-ordered
15 treatment pursuant to subsection A of this section, the court also learns
16 that the patient has a guardian appointed under title 14, the court with
17 notice may impose on the existing guardian additional duties pursuant to
18 section 14-5312.01. If the court imposes additional duties on an existing
19 guardian as prescribed in this subsection, the court may determine that the
20 patient needs to continue treatment under a court order for treatment and may
21 issue the order or determine that the patient's needs can be adequately met
22 by the guardian with the additional duties pursuant to section 14-5312.01 and
23 decline to issue the court order for treatment. If at any time after the
24 issuance of a court order for treatment the court finds that the patient's
25 needs can be adequately met by the guardian with the additional duties
26 pursuant to section 14-5312.01 and that a court order for treatment is no
27 longer necessary to assure compliance with necessary treatment, the court may
28 terminate the court order for treatment. If there is a court order for
29 treatment and a guardianship with additional mental health authority pursuant
30 to section 14-5312.01 existing at the same time, the treatment and placement
31 decisions made by the treatment agency assigned by the court to supervise and
32 administer the patient's treatment program pursuant to the court order for
33 treatment are controlling unless the court orders otherwise.

34 K. The court shall file a report as part of the court record on its
35 findings of alternatives for treatment.

36 L. Treatment shall not include psychosurgery, lobotomy or any other
37 brain surgery without specific informed consent of the patient or the
38 patient's legal guardian and an order of the superior court in the county in
39 which the treatment is proposed, approving with specificity the use of the
40 treatment.

41 M. The medical director or any person, agency or organization used by
42 the medical director to supervise the terms of an outpatient treatment plan
43 shall ~~IS not be held~~ IS not be held civilly liable for any acts committed by a patient while
44 on outpatient treatment if the medical director, person, agency or
45 organization has in good faith followed the requirements of this section.

1 N. A peace officer who in good faith apprehends and transports a
2 patient to an inpatient treatment facility on the order of the medical
3 director of the outpatient treatment facility pursuant to subsection E,
4 paragraph 5 of this section is not subject to civil liability.

5 O. If a person has been found, as a result of a mental disorder, to
6 constitute a danger to self or others or to be persistently or acutely
7 disabled or gravely disabled and the court enters an order for treatment
8 pursuant to subsection A of this section, the court shall ~~grant access to~~
9 TRANSMIT the person's name, SEX, date of birth, social security number, IF
10 AVAILABLE, and date of ~~commitment~~ THE ORDER FOR TREATMENT to the SUPREME
11 COURT. THE SUPREME COURT SHALL TRANSMIT THE INFORMATION TO THE department of
12 public safety to comply with the requirements of title 13, chapter 31 and
13 title 32, chapter 26. THE DEPARTMENT OF PUBLIC SAFETY SHALL TRANSMIT THE
14 INFORMATION TO THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM. THE
15 SUPERIOR COURT MAY ACCESS THE INFORMATION OF A PERSON WHO IS ORDERED INTO
16 TREATMENT TO ENFORCE OR FACILITATE A TREATMENT ORDER.

17 P. ON REQUEST, THE CLERK OF THE COURT SHALL PROVIDE CERTIFIED COPIES
18 OF THE COMMITMENT ORDER TO A LAW ENFORCEMENT OR PROSECUTING AGENCY THAT IS
19 INVESTIGATING OR PROSECUTING A PROHIBITED POSSESSOR AS DEFINED IN SECTION
20 13-3101.

21 Sec. 10. Effective date

22 This act is effective from and after December 31, 2014.

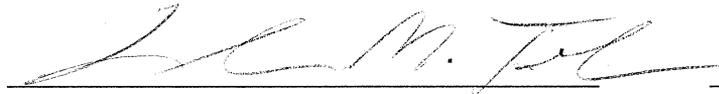
APPROVED BY THE GOVERNOR APRIL 30, 2014.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 30, 2014.

Passed the House March 5, 2014

by the following vote: 57 Ayes,

1 Nays, 2 Not Voting



Speaker of the House



Chief Clerk of the House

Passed the Senate April 27, 2014

by the following vote: 28 Ayes,

0 Nays, 2 Not Voting



President of the Senate



Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

_____ day of _____, 20____

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

at _____ o'clock _____ M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this _____ day of _____, 20____

at _____ o'clock _____ M.

Secretary of State

H.B. 2322

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

April 23, 2014,

by the following vote: 53 Ayes,

0 Nays, 7 Not Voting



Speaker of the House

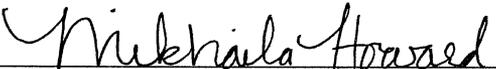

Cheryl Laube
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

24 day of April, 2014,

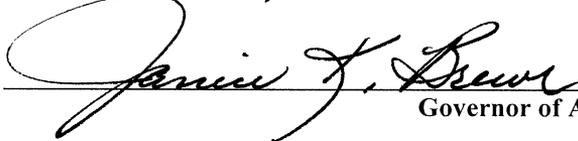
at 9:40 o'clock A M.


Secretary to the Governor

Approved this 30th day of

April, 2014,

at 11:29 o'clock A. M.


Governor of Arizona

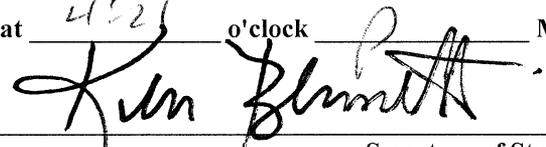
H.B. 2322

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 30th day of April, 2014,

at 4:25 o'clock P. M.


Secretary of State