

State of Arizona
Senate
Fiftieth Legislature
Second Regular Session
2012

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)

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

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

4 1-215. Definitions

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

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

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

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

12 4. "Alternative fuel" means:

13 (a) Electricity.

14 (b) Solar energy.

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

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

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

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

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

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

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

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

1 7. "Clean burning fuel" means:

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

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

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

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

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

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

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

31 (ii) Meets ASTM D975.

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

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

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

44 (e) Neat methanol.

45 (f) Neat ethanol.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42 27. "Oath" includes an affirmation or declaration.

43 28. "Peace officers" means sheriffs of counties, constables, marshals,
44 policemen of cities and towns, commissioned personnel of the department of
45 public safety, personnel who are employed by the state department of
46 corrections and the department of juvenile corrections AND who have received

1 a certificate from the Arizona peace officer standards and training board,
2 peace officers who are appointed by a multicounty water conservation district
3 and who have received a certificate from the Arizona peace officer standards
4 and training board, police officers who are appointed by community college
5 district governing boards and who have received a certificate from the
6 Arizona peace officer standards and training board, police officers who are
7 appointed by the Arizona board of regents and who have received a certificate
8 from the Arizona peace officer standards and training board, ~~and~~ police
9 officers who are appointed by the governing body of a public airport pursuant
10 to section 28-8426 and who have received a certificate from the Arizona peace
11 officer standards and training board AND SPECIAL AGENTS FROM THE OFFICE OF
12 THE ATTORNEY GENERAL, OR OF A COUNTY ATTORNEY, AND WHO HAVE RECEIVED A
13 CERTIFICATE FROM THE ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD.

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

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

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

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

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

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

32 35. "Registered mail" includes certified mail.

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

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

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

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

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

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

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

9 43. "Will" includes codicils.

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

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

14 46. "Writing" includes printing.

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

16 13-1210. Assaults on public safety employees or volunteers and
17 state hospital employees; disease testing; petition;
18 hearing; notice; definitions

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

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

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

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

40 B. An employee of the Arizona state hospital or the employing agency
41 may petition the court for an order authorizing testing of another person for
42 the human immunodeficiency virus, common blood borne diseases or other
43 diseases specified in the petition if there are reasonable grounds to believe
44 an exposure occurred and the person is a patient who is confined to the
45 Arizona state hospital and who is alleged to have interfered with the
46 official duties of the Arizona state hospital employee by biting, scratching,

1 spitting or transferring blood or other bodily fluids on or through the skin
2 or membranes of the Arizona state hospital employee.

3 C. The court shall hear the petition promptly. If the court finds
4 that probable cause exists to believe that a possible transfer of blood or
5 other bodily fluids occurred between the person and the public safety
6 employee or volunteer or the Arizona state hospital employee, the court shall
7 order that either:

8 1. The person provide two specimens of blood for testing.

9 2. If the person is deceased, the medical examiner draw two specimens
10 of blood for testing.

11 D. Notwithstanding subsection C, paragraph 2 of this section, on
12 written notice from the agency, officer or entity employing the public safety
13 employee or volunteer, the medical examiner is authorized to draw two
14 specimens of blood for testing during the autopsy or other examination of the
15 deceased person's body. The medical examiner shall release the specimen to
16 the employing agency, officer or entity for testing only after the court
17 issues its order pursuant to subsection C, paragraph 2 of this section. If
18 the court does not issue an order within thirty days after the medical
19 examiner collects the specimen, the medical examiner shall destroy the
20 specimen.

21 E. Notice of the test results shall be provided as prescribed by the
22 department of health services to the person tested, to the public safety
23 employee or volunteer or the Arizona state hospital employee named in the
24 petition and to the employee's or volunteer's employing agency, officer or
25 entity and, if the person tested is incarcerated or detained, to the officer
26 in charge and the chief medical officer of the facility in which the person
27 is incarcerated or detained.

28 F. Section 36-665 does not apply to this section.

29 G. For the purposes of this section:

30 1. "Arizona state hospital" includes the Arizona community protection
31 and treatment center.

32 2. "Arizona state hospital employee" means an employee of the Arizona
33 state hospital who has direct patient contact.

34 3. "Private prison security officer" means a security officer who is
35 employed by a private contractor that contracts with a governmental entity to
36 provide detention or incarceration facility services for offenders.

37 4. "Public safety employee or volunteer" means a law enforcement
38 officer, any employee or volunteer of a state or local law enforcement
39 agency, a probation officer, a surveillance officer, an adult or juvenile
40 correctional service officer, a detention officer, a private prison security
41 officer, a firefighter or an emergency medical technician.

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

43 32-2414. Licensure or registration of peace officers prohibited

44 The department may not issue a license or registration certificate
45 pursuant to this chapter to a peace officer, including a reserve peace
46 officer. This section does not apply to retired peace officers or peace

1 officers, INCLUDING RESERVE PEACE OFFICERS, who are accident
2 reconstructionists OR FIRE ORIGIN AND CAUSE INVESTIGATORS.

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

4 38-1101. Law enforcement officers; probation officers; right to
5 representation; right to evidence on appeal; change
6 of hearing officer or administrative law judge;
7 burden of proof; polygraph examinations; definitions

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

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

32 2. Before the commencement of any interview described in this section,
33 the employer shall provide the law enforcement officer or probation officer
34 with a written notice informing the officer of the alleged facts that are the
35 basis of the investigation, the specific nature of the investigation, the
36 officer's status in the investigation, all known allegations of misconduct
37 that are the reason for the interview and the officer's right to have a
38 representative present at the interview. The notice shall include copies of
39 all complaints that contain the alleged facts that are reasonably available,
40 except for copies of complaints that involve matters pursuant to federal laws
41 under the jurisdiction of the equal employment opportunity commission.

42 3. After an employer completes an investigation of a law enforcement
43 officer or probation officer if the employer seeks disciplinary action at the
44 request of the law enforcement officer or probation officer, the employer
45 shall provide a basic summary of any discipline ordered against any other law
46 enforcement officer or probation officer of generally similar rank and

1 experience employed by the employer within the previous two years for the
2 same or a similar violation. As an alternative, the employer may provide
3 file copies of the relevant disciplinary cases. The employer shall not take
4 final action and the employer shall not schedule the hearing until the basic
5 summary or file copies are provided to the law enforcement officer or
6 probation officer. This paragraph does not apply if court rule prohibits the
7 release of file copies of disciplinary cases.

8 4. The employer may require the law enforcement officer or probation
9 officer to submit to a polygraph examination if the officer makes a statement
10 to the employer during the investigation that differs from other information
11 relating to the investigation that is known to the employer and reconciling
12 that difference is necessary to complete the investigation. If a polygraph
13 examination is administered pursuant to this paragraph, the employer or the
14 person administering the polygraph examination shall make an audio recording
15 of the complete polygraph procedure and provide a copy of the recording to
16 the law enforcement officer or probation officer.

17 5. The law enforcement officer or probation officer, at the conclusion
18 of the interview, is entitled to a period of time to consult with the
19 officer's representative and may make a statement not to exceed five minutes
20 addressing specific facts or policies that are related to the interview.

21 B. The results of a polygraph examination in an investigation shall
22 not be the basis for disciplinary action unless other evidence or information
23 exists.

24 C. Subsection A of this section does not require the employer to
25 either:

26 1. Stop an interview to issue another notice for allegations based on
27 information provided by the law enforcement officer or probation officer
28 during the interview.

29 2. Disclose any fact to the law enforcement officer or probation
30 officer or the law enforcement officer's or probation officer's
31 representative that would impede the investigation.

32 D. Subsection A, paragraphs 1 and 2 of this section do not apply to an
33 interview of a law enforcement officer or probation officer that is:

34 1. In the normal course of duty, counseling or instruction or an
35 informal verbal admonishment by, or other routine or unplanned contact with,
36 a supervisor or any other law enforcement officer or probation officer.

37 2. Preliminary questioning to determine the scope of the allegations
38 or if an investigation is necessary.

39 3. Conducted in the course of a criminal investigation.

40 4. Conducted in the course of a polygraph examination.

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

45 1. Within three business days after the employer's receipt of a
46 written request from the law enforcement officer or probation officer for a

1 copy of the investigative file that is accompanied by a copy of the filed
2 notice of appeal, the employer shall provide a complete copy of the
3 investigative file as well as the names and home or work mailing addresses of
4 all persons interviewed during the course of the investigation.

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

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

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

27 G. The employer or the law enforcement officer or probation officer
28 may seek a determination by the hearing officer, administrative law judge or
29 appeals board hearing the appeal regarding any evidence that the employer or
30 the law enforcement officer or probation officer believes should not be
31 disclosed pursuant to subsection E of this section because the risk of harm
32 involved in disclosure outweighs any usefulness of the disclosure in the
33 hearing. In determining whether evidence will be disclosed, the hearing
34 officer, administrative law judge or appeals board may perform an in camera
35 review of the evidence and may disclose the material subject to any
36 restriction on the disclosure, including the closing of the hearing or the
37 sealing of the records, that the hearing officer, administrative law judge or
38 appeals board finds necessary under the circumstances.

39 H. In any appeal of a disciplinary action by a law enforcement officer
40 or probation officer in which a single hearing officer or administrative law
41 judge has been appointed to conduct the appeal hearing, the law enforcement
42 officer or probation officer or the employer may request a change of hearing
43 officer or administrative law judge. In cases before the office of
44 administrative hearings or if the employer is a county, city or town on the
45 first request of a party, the request shall be granted. A city or town with
46 a population of less than sixty-five thousand persons or a county with a

1 population of less than two hundred fifty thousand persons must provide, **IF**
2 **NECESSARY TO COMPLY WITH THIS SUBSECTION**, for an alternate hearing officer by
3 means of an interagency agreement with another city, town or county. If the
4 law enforcement officer or probation officer is the party that requested the
5 alternate hearing officer, the law enforcement officer or probation officer
6 shall reimburse the city, town or county for one-half of any additional
7 expenses incurred by the city, town or county in procuring the alternate
8 hearing officer under the interagency agreement. If an alternate hearing
9 officer is requested by means of an interagency agreement, the hearing
10 officer shall provide to the law enforcement officer or probation officer or
11 employer the option of continuing the hearing for an additional ten days.
12 Any subsequent requests may be granted only on a showing that a fair and
13 impartial hearing cannot be obtained due to the prejudice of the assigned
14 hearing officer or administrative law judge. The supervisor or supervising
15 body of the hearing officer or administrative law judge shall decide whether
16 a showing of prejudice has been made.

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

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

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

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

43 M. This section does not preempt agreements that supplant, revise or
44 otherwise alter the provisions of this section, including preexisting
45 agreements between the employer and the law enforcement officer or probation

1 officer or the law enforcement officer's or probation officer's lawful
2 representative association.

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

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

15 P. For the purposes of this section:

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

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

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

26 4. "Law enforcement officer" means:

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

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

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

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

37 38-1104. Discipline of law enforcement officers; exceptions;
38 definitions

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

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

45 C. This section does not preempt agreements that supplant, revise or
46 otherwise alter the provisions of this section, including preexisting

1 agreements, between the employer and the law enforcement officer's lawful
2 representative association.

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

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

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

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

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

29 I. For the purposes of this section:

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

33 2. "Disciplinary action" has the same meaning prescribed in section
34 38-1101.

35 3. "Just cause" means:

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

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

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

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

3 4. "Law enforcement officer" means:

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

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

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

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

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

15 38-1109. Law enforcement officers; fitness for duty
16 examinations; rights of officers; definitions

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

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

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

34 D. THE REPORT SHALL BE PROVIDED ONLY TO THE EMPLOYER AND THE LAW
35 ENFORCEMENT OFFICER AND SHALL NOT BE PROVIDED TO ANY OTHER PERSON EXCEPT AS
36 REQUIRED FOR ANY SUBSEQUENT APPEAL OR CERTIFICATION ACTION INVOLVING THE LAW
37 ENFORCEMENT OFFICER. THE EMPLOYER SHALL PROVIDE NOTICE TO THE OFFICER THAT
38 THE REPORT HAS BEEN RECEIVED BY THE EMPLOYER. THE REPORT SHALL BE PROVIDED
39 TO THE OFFICER IMMEDIATELY IF THE OFFICER PRESENTS THE FINAL REPORT OF AN
40 INDEPENDENT MEDICAL EXAMINATION OR IF THE OFFICER WAIVES ANY RIGHT TO REQUEST
41 AN INDEPENDENT MEDICAL EXAMINATION. IF THE OFFICER DOES NOT PRESENT THE
42 RESULTS OF AN INDEPENDENT MEDICAL EXAMINATION WITHIN TWENTY DAYS AFTER THE
43 EMPLOYER PROVIDES THE OFFICER NOTICE THAT THE REPORT HAS BEEN RECEIVED BY THE
44 EMPLOYER, THE OFFICER IS DEEMED TO HAVE WAIVED THE RIGHT TO PRESENT THE
45 RESULTS OF THE INDEPENDENT MEDICAL EXAMINATION.

1 E. THE EMPLOYER SHALL MAKE A REASONABLE GOOD FAITH EFFORT TO DELIVER
2 THE REPORT TO THE OFFICER.

3 F. THE PHYSICIAN MAY CONSIDER AND REPORT ON ONLY THE OFFICER'S MEDICAL
4 OR OTHER RECORDS THAT ARE DIRECTLY RELEVANT TO THE ACTIONS IN QUESTION AND
5 WHEN CONDUCTING THE EXAMINATION, INCLUDING MEDICAL RECORDS THAT RECORD
6 PREEXISTING CONDITIONS THAT ARE RELEVANT TO THE EXAMINATION. THE PHYSICIAN
7 MAY ADDITIONALLY CONSIDER AND REPORT ANY CONDITION OF THE OFFICER THAT THE
8 PHYSICIAN IDENTIFIES DURING THE COURSE OF THE PHYSICAL EXAMINATION AND THAT
9 ENDANGERS THE SAFETY OF THE OFFICER OR THE COMMUNITY.

10 G. THE EMPLOYER SHALL NOT TAKE ANY FINAL ACTION UNTIL AFTER THE LAW
11 ENFORCEMENT OFFICER HAS HAD AT LEAST TWENTY DAYS TO REVIEW THE REPORT UNLESS
12 THE OFFICER WAIVES THE TWENTY DAY PERIOD OR THE EMPLOYER GRANTS AN EXTENSION.

13 H. THIS SECTION DOES NOT PROHIBIT THE PREEXAMINATION MATERIALS FROM
14 BEING USED IN ANY PROCEEDING HELD PURSUANT TO SECTION 38-1101.

15 I. PROVIDING THE PREEXAMINATION MATERIALS TO THE PERSON CONDUCTING THE
16 INDEPENDENT EXAMINATION OF THE LAW ENFORCEMENT OFFICER DOES NOT CHANGE THE
17 DISCLOSURE REQUIREMENTS UNDER SECTION 38-1101.

18 J. THIS SECTION DOES NOT DIMINISH ANY RIGHTS OF A LAW ENFORCEMENT
19 OFFICER THAT EXIST IN THIS TITLE AND DOES NOT PREEMPT AGREEMENTS THAT
20 SUPPLANT, REVISE OR OTHERWISE ALTER THE PROVISIONS OF THIS SECTION, INCLUDING
21 PREEXISTING AGREEMENTS BETWEEN EMPLOYERS AND LAW ENFORCEMENT OFFICERS OR THE
22 LAW ENFORCEMENT OFFICER'S LAWFUL REPRESENTATIVE ASSOCIATION.

23 K. FOR THE PURPOSES OF THIS SECTION:

24 1. "INDEPENDENT MEDICAL EXAMINATION" MEANS AN ASSESSMENT THAT IS
25 REQUESTED BY A LAW ENFORCEMENT OFFICER, THAT IS CONDUCTED BY A PHYSICIAN WHO
26 IS LICENSED PURSUANT TO TITLE 32, CHAPTER 13 OR 17 AND THAT IS USED TO
27 PROVIDE A SECOND, INDEPENDENT OPINION OF A CURRENT LAW ENFORCEMENT OFFICER
28 WHO HAS BEEN DETERMINED TO NOT BE ABLE TO PERFORM ESSENTIAL FUNCTIONS OF THE
29 JOB AS A RESULT OF OBSERVATION AND A SUBSEQUENT EMPLOYER-ORDERED PHYSICAL
30 EXAMINATION.

31 2. "LAW ENFORCEMENT OFFICER" MEANS:

32 (a) A REGULARLY EMPLOYED AND PAID INDIVIDUAL, OTHER THAN A
33 PROBATIONARY EMPLOYEE, WHO IS CERTIFIED BY THE ARIZONA PEACE OFFICER
34 STANDARDS AND TRAINING BOARD AND WHO IS WORKING IN A POSITION REQUIRING
35 CERTIFICATION BY THE ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD,
36 OTHER THAN A PERSON EMPLOYED BY A MULTI-COUNTY WATER CONSERVATION DISTRICT,
37 AN AT WILL EMPLOYEE OR A VOLUNTARY OR RESERVE EMPLOYEE.

38 (b) A CORRECTIONS OFFICER OR DETENTION OFFICER, EXCLUDING A JUVENILE
39 DETENTION OFFICER, WHO IS EMPLOYED BY THIS STATE OR A POLITICAL SUBDIVISION
40 OF THIS STATE.

41 3. "PREEXAMINATION MATERIALS" MEANS ALL INFORMATION OR MATERIALS THAT
42 THE EMPLOYER GIVES TO THE PHYSICIAN WHO CONDUCTS THE PHYSICAL EXAMINATION AND
43 THAT SERVE AS THE BASIS FOR THE EXAMINATION.

44 Sec. 7. Repeal

45 Section 41-192.03, Arizona Revised Statutes, is repealed.

S.B. 1186

APPROVED BY THE GOVERNOR MAY 14, 2012.

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