

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

HOUSE BILL 2440

AN ACT

AMENDING SECTIONS 32-2406, 32-2409 AND 32-2457, ARIZONA REVISED STATUTES; AMENDING TITLE 32, CHAPTER 24, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTION 32-2462; AMENDING SECTIONS 32-2616 AND 32-2636, ARIZONA REVISED STATUTES; RELATING TO PRIVATE INVESTIGATORS AND SECURITY GUARDS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 32-2406, Arizona Revised Statutes, is amended to
3 read:

4 32-2406. Hearings and special meetings

5 ~~A.~~ The board shall hold hearings at a time and place determined by the
6 director. The board may hold special meetings the chairman determines
7 necessary to carry out the functions of the board.

8 ~~B. A quorum consists of three members.~~

9 Sec. 2. Section 32-2409, Arizona Revised Statutes, is amended to read:

10 32-2409. Exemptions

11 This chapter does not apply to:

12 1. An officer or employee of the federal government, this state or a
13 political subdivision of this state, while engaged in the official
14 performance of the officer's or employee's duties.

15 2. A person, firm or corporation, or an employee of a person, firm or
16 corporation, engaged in the business of obtaining and furnishing financial
17 and related personal information for others, including a consumer reporting
18 agency as defined in the fair credit reporting act (15 United States Code
19 section 1681a), if the person, firm or corporation does not engage in other
20 investigative research that is an investigative consumer report as defined in
21 the fair credit reporting act (15 United States Code section 1681a) and if
22 the employee is not employed or connected with any private investigator or
23 private investigator's business.

24 3. A practicing attorney involved in a case for which the attorney has
25 been retained or a person employed under an employee-employer relationship
26 with a practicing attorney, in the employee's performance of duties related
27 to a case for which the attorney has been retained.

28 4. A collection agency licensed in this state, or its employee while
29 acting within the scope of employment, while making an investigation
30 incidental to the business of the agency, including an investigation of the
31 location of a debtor or the debtor's property if the contract with an
32 assignor creditor is for the collection of claims owed or due or asserted to
33 be owed or due or its equivalent.

34 5. Insurance ~~brokers~~ PRODUCERS, adjusters and agents licensed by this
35 state in performing their duties in connection with insurance transacted by
36 them.

37 6. The legal owner of personal property that has been sold under a
38 sales agreement in making investigations relating to the sales agreement.

39 7. A member of the news media and its employees when engaged in
40 obtaining information for the purpose of disseminating news to the public.

41 8. Public service corporations engaged in transmitting messages,
42 furnishing public telegraph or telephone service or investigating the use or
43 misuse of their equipment and facilities or the use or misuse of the
44 equipment and facilities of any connecting telecommunications company.

1 9. Private process servers who are duly registered and performing
2 their duties pursuant to the Arizona rules of civil procedure.

3 10. A person, firm or corporation, or an employee of a person, firm or
4 corporation, that, for any consideration, observes consumer purchases of
5 products or services in the public environments of a business establishment
6 for the purpose of evaluating customer service, operational procedures,
7 cleanliness, product quality and availability if all of the following apply:

8 (a) The information is obtained from questionnaires that the business
9 establishment approves in advance of use.

10 (b) The obtained information is used for employee training or
11 incentives.

12 (c) The obtained information is not used for prosecution of an
13 employee.

14 (d) The business establishment does not use a single evaluation as the
15 only basis for an employee's termination from employment.

16 11. A person or entity that is performing duties pursuant to statute
17 and that is certified or registered by the supreme court.

18 Sec. 3. Section 32-2457, Arizona Revised Statutes, is amended to read:

19 32-2457. Grounds for disciplinary action; emergency summary
20 suspension; judicial review

21 A. The following constitute grounds for which disciplinary action
22 specified in subsection B of this section may be taken against a licensee or
23 registrant or, if the licensee is other than an individual, against the
24 licensee's qualifying party or any of its associates, directors or managers:

25 1. Fraud or wilful misrepresentation in applying for an original
26 license or registration or the renewal of an existing license or
27 registration.

28 2. Using any letterhead, advertisement or other printed matter in any
29 manner or representing that the licensee, associate, registrant or employee
30 of the licensee is an instrumentality of the federal government, a state or
31 any political subdivision of a state.

32 3. Using a name that is different from that under which the licensee,
33 associate, registrant or employee of the licensee is currently licensed for
34 any advertisement, solicitation or contract to secure business unless the
35 name is an authorized fictitious name.

36 4. Impersonating, permitting or aiding and abetting an employee to
37 impersonate a law enforcement officer or employee of the United States, any
38 state or a political subdivision of a state.

39 5. Knowingly violating, or advising, encouraging or assisting the
40 violation of, any statute, court order, warrant or injunction in the course
41 of a business regulated under this chapter.

42 6. Falsifying fingerprints, photographs or other documents while
43 operating under this chapter.

44 7. Conviction of a felony.

- 1 8. Conviction of any act involving a weapon pursuant to section
2 13-3102.
- 3 9. Conviction of any act of personal violence or force against any
4 person or conviction of threatening to commit any act of personal violence or
5 force against any person.
- 6 10. Soliciting business for an attorney in return for compensation.
- 7 11. Conviction of any act constituting dishonesty or fraud.
- 8 12. Being on parole, on community supervision, on work furlough, on
9 home arrest, on release on any other basis or named in an outstanding arrest
10 warrant.
- 11 13. Serving a term of probation pursuant to a conviction for any act of
12 personal violence or domestic violence as defined in section 13-3601 or an
13 offense that has the same elements as a domestic violence offense listed in
14 section 13-3601, subsection A.
- 15 14. Committing or knowingly permitting any employee to commit any
16 violation of this chapter or rules adopted pursuant to this chapter.
- 17 15. Wilfully failing or refusing to render to a client services or a
18 report as agreed between the parties and for which compensation has been paid
19 or tendered in accordance with the agreement of the parties.
- 20 16. The unauthorized release of information acquired on behalf of a
21 client by a licensee, associate or registrant as a result of activities
22 regulated under this chapter.
- 23 17. Failing or refusing to cooperate with or refusing access to an
24 authorized representative of the department engaged in an official
25 investigation pursuant to this chapter.
- 26 18. Employing or contracting with any unregistered or improperly
27 registered person or unlicensed or improperly licensed person or agency to
28 conduct activities regulated under this chapter if the licensure or
29 registration status was known or could have been ascertained by reasonable
30 inquiry.
- 31 19. Permitting, authorizing, aiding or in any way assisting a
32 registered employee to conduct services as described in this chapter on an
33 independent contractor basis and not under the authority of the licensed
34 agency.
- 35 20. Failing to maintain in full force and effect workers' compensation
36 insurance, if applicable.
- 37 21. Conducting private investigation services regulated by this chapter
38 on an expired, revoked or suspended license or registration.
- 39 22. Accepting employment, contracting or in any way engaging in
40 employment that has an adverse impact on investigations being conducted on
41 behalf of clients.
- 42 23. Advertising in a false, deceptive or misleading manner.
- 43 24. Failing to display on request the identification card issued by the
44 department as required under section 32-2451, subsection B.
- 45 25. Committing any act of unprofessional conduct.

1 26. BEING ARRESTED FOR ANY OFFENSE THAT IS LISTED IN THIS CHAPTER AND
2 THAT WOULD DISQUALIFY THE LICENSEE, REGISTRANT OR QUALIFYING PARTY OR ANY OF
3 ITS ASSOCIATES, DIRECTORS OR MANAGERS FROM OBTAINING A LICENSE OR
4 REGISTRATION.

5 27. FAILING TO MAINTAIN ALL QUALIFICATIONS AS PRESCRIBED BY SECTIONS
6 32-2422 AND 32-2441, AS APPLICABLE.

7 B. On completion of an investigation, the director:

8 1. May dismiss the case.

9 2. May take emergency action.

10 3. May issue a letter of concern, if applicable.

11 4. May forward the findings to the board for review and possible
12 disciplinary action.

13 5. Shall place all records, evidence, findings and conclusions and any
14 other information pertinent to the investigation in the public records
15 section of the file maintained at the department.

16 6. SHALL SUSPEND THE LICENSE OR REGISTRATION OF A PERSON WHO IS
17 ARRESTED FOR AN OFFENSE THAT IS LISTED IN THIS CHAPTER AND THAT WOULD
18 DISQUALIFY THE PERSON FROM OBTAINING A LICENSE OR REGISTRATION.

19 C. A letter of concern is a public document and may be used in future
20 disciplinary actions against a licensee.

21 D. If the department finds, based on its investigation, that the
22 public health, safety or welfare requires emergency action, the director may
23 order a summary suspension of a license or registration pending proceedings
24 for revocation or other action. If the director issues this order, the
25 department shall serve the licensee or registrant with a written notice of
26 complaint and formal hearing, setting forth the charges made against the
27 licensee or registrant and the licensee's or registrant's right to a formal
28 hearing before the board pursuant to title 41, chapter 6, article 10.

29 E. If the department finds, based on its investigation, that a
30 violation of subsection A of this section occurred, a hearing by the board
31 may be scheduled pursuant to title 41, chapter 6, article 10. The department
32 shall send notice of the hearing by certified mail, return receipt requested,
33 to the licensee's or registrant's last known address in the department's
34 records.

35 F. Based on information the board receives during a hearing pursuant
36 to title 41, chapter 6, article 10, it may recommend to the director that the
37 director:

38 1. Dismiss the complaint if the board believes it is without merit.

39 2. Fix a period and terms of probation best adapted to protect the
40 public health and safety and to rehabilitate or educate the licensee or
41 registrant.

42 3. ~~Place~~ SUSPEND the license or registration ~~on suspension~~ for a
43 period of not more than twelve months.

44 4. Revoke the license or registration.

1 G. On a finding by the board and review and concurrence by the
2 director that a licensee or registrant committed a violation of subsection A
3 of this section, the probation, suspension or revocation applies to all
4 licenses or registrations held by a licensee or registrant under this chapter
5 **AND CHAPTER 26 OF THIS TITLE.**

6 H. Except as provided in section 41-1092.08, subsection H, a person
7 may appeal a final administrative decision made pursuant to this section to
8 the superior court pursuant to title 12, chapter 7, article 6.

9 Sec. 4. Title 32, chapter 24, article 4, Arizona Revised Statutes, is
10 amended by adding section 32-2462, to read:

11 **32-2462. Notice of arrest**

12 **WITHIN FORTY-EIGHT HOURS AFTER BEING ARRESTED, A PRIVATE INVESTIGATOR**
13 **OR A QUALIFYING PARTY SHALL NOTIFY THE EMPLOYER AGENCY OF THE ARREST. WITHIN**
14 **TWENTY-FOUR HOURS AFTER RECEIVING NOTICE OF THE ARREST, THE EMPLOYER AGENCY**
15 **SHALL NOTIFY THE DEPARTMENT OF THE ARREST.**

16 Sec. 5. Section 32-2616, Arizona Revised Statutes, is amended to read:

17 **32-2616. Qualifying party; responsibilities**

18 A. An applicant for an agency license shall have a qualifying party.

19 B. For a sole proprietorship, the qualifying party shall be the agency
20 licensee.

21 C. For a partnership, corporation or limited liability company, the
22 qualifying party shall be the individual who is liable for managing the
23 agency. All other partners or corporate officers shall register as
24 associates pursuant to article 3 of this chapter.

25 D. If the qualifying party lives outside this state, the qualifying
26 party shall designate a resident manager who is a manager of the agency, who
27 maintains full-time legal residency in this state and who meets the
28 requirements of sections 32-2612 and 32-2613.

29 E. If required, the qualifying party shall maintain workers'
30 compensation insurance **AND LIABILITY INSURANCE** in effect **AS PRESCRIBED BY**
31 **SECTION 32-2613, SUBSECTION C.**

32 Sec. 6. Section 32-2636, Arizona Revised Statutes, is amended to read:

33 **32-2636. Grounds for disciplinary action; emergency summary**
34 **suspension; judicial review**

35 A. The following constitute grounds for disciplinary action against a
36 licensee or registrant, or if the licensee is other than an individual,
37 against its qualifying party or any of its associates, directors or managers:

38 1. Using any letterhead, advertisement or other printed matter to
39 represent, or in any other manner representing, that the licensee,
40 registrant, ~~OR~~ qualifying party or **ITS** associate, director or manager is an
41 instrumentality of the federal government or any state or political
42 subdivision of a state.

43 2. Using a name that is different from that under which the licensee,
44 registrant, ~~OR~~ qualifying party or **ITS** associate, director or manager is
45 currently licensed or registered for any advertisement, solicitation or

- 1 contract to secure business under this chapter unless the name is an
2 authorized fictitious name.
- 3 3. Falsifying fingerprints, photographs or other documents while
4 operating pursuant to this chapter.
- 5 4. Impersonating, or permitting or aiding and abetting an employee to
6 impersonate, a law enforcement officer or employee of the United States or
7 any state or political subdivision of a state.
- 8 5. Knowingly violating, or advising, encouraging or assisting in the
9 violation of, any statute, court order, warrant or injunction in the course
10 of business as a licensee or registrant under this chapter.
- 11 6. Committing or knowingly permitting any employee to commit any
12 violation of this chapter or rules adopted pursuant to this chapter.
- 13 7. Committing an act of misconduct involving a weapon pursuant to
14 section 13-3102.
- 15 8. Conviction of a felony.
- 16 9. Conviction of any act of personal violence or force against any
17 person or conviction of threatening to commit any act of personal violence or
18 force against any person.
- 19 10. Fraud or wilful misrepresentation in applying for an original
20 license or registration or the renewal of an existing license or
21 registration.
- 22 11. Soliciting business for an attorney in return for compensation.
- 23 12. Conviction of any act constituting fraud.
- 24 13. Being on parole, on community supervision, on work furlough, on
25 home arrest, on release on any other basis or named in an outstanding arrest
26 warrant.
- 27 14. Serving a term of probation pursuant to a conviction for any act of
28 personal violence or domestic violence as defined in section 13-3601 or an
29 offense that has the same elements as a domestic violence offense listed in
30 section 13-3601, subsection A.
- 31 15. Wilfully failing or refusing to render client services or a report
32 as agreed between the parties and for which compensation has been paid or
33 tendered pursuant to the agreement of the parties.
- 34 16. The unauthorized release of information acquired on behalf of a
35 client by a licensee, associate or registrant as a result of activities
36 regulated under this chapter.
- 37 17. Failing or refusing to cooperate with or refusing access to an
38 authorized representative of the department engaged in an official
39 investigation pursuant to this chapter.
- 40 18. Employing or contracting with any unregistered or improperly
41 registered person or unlicensed or improperly licensed person or agency to
42 conduct activities regulated under this chapter if the licensure or
43 registration status was known or could have been ascertained by reasonable
44 inquiry.

- 1 19. Permitting, authorizing, aiding or in any way assisting a
2 registered employee to conduct services as described in this chapter on an
3 independent contractor basis and not under the authority of the licensed
4 agency.
- 5 20. Failing to maintain in full force and effect workers' compensation
6 insurance, if applicable, **OR LIABILITY INSURANCE AS PRESCRIBED BY SECTION**
7 **32-2613, SUBSECTION C.**
- 8 21. Conducting security guard services regulated by this chapter on an
9 expired, revoked or suspended license or registration.
- 10 22. Accepting employment, contracting or in any way engaging in
11 employment that has an adverse impact on security guard services being
12 conducted on behalf of clients.
- 13 23. Advertising in a false, deceptive or misleading manner.
- 14 24. Failing to display on request the identification card issued by the
15 department pursuant to section 32-2624.
- 16 25. Committing any act of unprofessional conduct.
- 17 26. Being arrested for any offense listed in this chapter that would
18 disqualify the licensee, registrant, ~~OR~~ **OR** qualifying party or any of its
19 associates, directors or managers from obtaining a license or registration.
- 20 **27. FAILING TO MAINTAIN ALL QUALIFICATIONS AS PRESCRIBED BY SECTIONS**
21 **32-2612 AND 32-2622, AS APPLICABLE.**
- 22 B. An officer, director, associate, partner, qualifying party,
23 employee or manager of the holder of an agency license issued pursuant to
24 this chapter who is found in violation of this chapter shall be denied the
25 privilege of operating under such a license. The remaining officers,
26 directors, associates, partners, employees or managers of such licensee who
27 are innocent of such violations may carry on the business.
- 28 C. Any person aggrieved by a decision of the director may request a
29 hearing pursuant to title 41, chapter 6, article 10. Except as provided in
30 section 41-1092.08, subsection H, final decisions of the director are subject
31 to judicial review pursuant to title 12, chapter 7, article 6.
- 32 D. On completion of an investigation, the director:
33 1. May dismiss the case.
34 2. May take emergency action.
35 3. May issue a letter of concern, if applicable.
36 4. May forward the findings to the board for review and possible
37 disciplinary action.
- 38 5. Shall place all records, evidence, findings and conclusions and any
39 other information pertinent to the investigation in the public records
40 section of the file maintained at the department.
- 41 6. Shall suspend the license or registration of a person who is
42 arrested for an offense **THAT IS** listed in this chapter **AND** that would
43 disqualify the person from obtaining a license or registration.
- 44 E. A letter of concern is a public document and may be used in future
45 disciplinary actions against a licensee or registrant.

1 F. If the department finds, based on its investigation, that the
2 public health, safety or welfare requires emergency action, the director may
3 order a summary suspension of a license or registration pending proceedings
4 for revocation or other action. If the director issues this order, the
5 department shall serve the licensee or registrant with a written notice of
6 complaint and formal hearing, setting forth the charges made against the
7 licensee or registrant and the licensee's or registrant's right to a formal
8 hearing before the board pursuant to title 41, chapter 6, article 10.

9 G. If the department finds, based on its investigation, that a
10 violation of subsection A of this section occurred, a hearing by the board
11 may be scheduled pursuant to title 41, chapter 6, article 10. Notice of the
12 hearing shall be sent by certified mail, return receipt requested, to the
13 licensee's or registrant's last known address in the department's files.

14 H. Based on information the board receives during a hearing pursuant
15 to title 41, chapter 6, article 10, it may recommend to the director that the
16 director:

17 1. Dismiss the complaint if the board believes it is without merit.
18 2. Fix a period and terms of probation best adapted to protect the
19 public health and safety and to rehabilitate or educate the licensee or
20 registrant.

21 3. ~~Place~~ SUSPEND the license or registration ~~on suspension~~ for a
22 period of not more than twelve months.

23 4. Revoke the license or registration.

24 I. The director shall review the records of a finding by the board
25 involving a disciplinary action and may affirm, reverse, adopt, modify,
26 supplement, amend or reject the recommendation of the board. On a finding by
27 the board and review and concurrence by the director that a licensee or
28 registrant committed a violation of subsection A of this section, the
29 probation, suspension or revocation applies to all licenses or registrations
30 held by a licensee or registrant under CHAPTER 24 OF THIS TITLE AND this
31 chapter.