

PROPOSED

SENATE AMENDMENTS TO S.B. 1378

(Reference to printed bill)

1 Strike everything after the enacting clause and insert:

2 "Section 1. Section 38-1104, Arizona Revised Statutes, is amended to  
3 read:

4 38-1104. Internal investigations; employee representative;  
5 exception

6 A. If an employer interviews a law enforcement officer in the course  
7 of an administrative investigation and the employer or law enforcement  
8 officer reasonably believes that the interview could result in dismissal,  
9 demotion or suspension:

10 1. The law enforcement officer may request to have a representative  
11 of the ~~officer~~ LAW ENFORCEMENT OFFICER'S CHOOSING TO BE present ~~at no cost~~  
12 ~~to the employer~~ during the interview. The law enforcement officer shall  
13 select a representative who is available on reasonable notice so that the  
14 interview is not unreasonably delayed. The representative shall  
15 participate in the interview only as an observer. ~~Unless agreed to by the~~  
16 ~~employer, the representative shall not be an attorney and shall be from the~~  
17 ~~same agency except that if a representative from the same agency is not~~  
18 ~~reasonably available, with the employer's permission, the law enforcement~~  
19 ~~officer's representative may be from the law enforcement officer's~~  
20 ~~professional membership organization.~~ The law enforcement officer's  
21 representative may take notes during the interview. The law enforcement  
22 officer and the LAW ENFORCEMENT officer's representative and attorney may  
23 use notes taken during the interview only to assist the LAW ENFORCEMENT  
24 officer in an investigation or a disciplinary matter. Notes taken by the  
25 law enforcement officer, the LAW ENFORCEMENT officer's representative or

1 the LAW ENFORCEMENT officer's attorney do not constitute an official record  
2 of the interview. The law enforcement officer may discuss the LAW  
3 ENFORCEMENT officer's interview with the LAW ENFORCEMENT officer's  
4 representative or attorney. If the law enforcement officer or the LAW  
5 ENFORCEMENT officer's representative or attorney releases information  
6 without authorization, the employer may subject the law enforcement officer  
7 or the LAW ENFORCEMENT officer's representative, if the representative is  
8 from the same agency, to disciplinary action. The law enforcement officer  
9 shall be allowed reasonable breaks of limited duration during any interview  
10 for telephonic or in-person consultation with authorized persons, including  
11 an attorney, who are immediately available. An employer shall not  
12 discipline, retaliate against or threaten to retaliate against a law  
13 enforcement officer for requesting that a representative be present or for  
14 acting as the representative of a law enforcement officer pursuant to this  
15 paragraph.

16 2. Before the commencement of any interview described in this  
17 section, the employer shall provide the law enforcement officer with a  
18 written notice informing the LAW ENFORCEMENT officer of the alleged facts  
19 that are the basis of the investigation, the specific nature of the  
20 investigation, the LAW ENFORCEMENT officer's status in the investigation,  
21 all known allegations of misconduct that are the reason for the interview  
22 and the LAW ENFORCEMENT officer's right to have a representative present at  
23 the interview. The employer shall provide the law enforcement officer with  
24 a copy of the written notice that the LAW ENFORCEMENT officer may  
25 retain. Along with the notice, the employer shall provide any relevant and  
26 readily available materials, including complaints that contain the alleged  
27 facts, except for complaints that are filed with the employer and that  
28 include allegations of unlawful discrimination, harassment or retaliation  
29 or complaints that involve matters under the jurisdiction of the United  
30 States equal employment opportunity commission. The format of the  
31 materials may be written, audio or video.

1           3. In the course of an administrative investigation, the law  
2 enforcement officer is allowed to record the LAW ENFORCEMENT officer's own  
3 interview. Recordings made by the law enforcement officer, the LAW  
4 ENFORCEMENT officer's representative or the LAW ENFORCEMENT officer's  
5 attorney do not constitute an official record of the interview.

6           4. At the conclusion of the interview, the law enforcement officer  
7 is entitled to a period of time to consult with the LAW ENFORCEMENT  
8 officer's representative and may make a statement not to exceed five  
9 minutes addressing specific facts or policies that are related to the  
10 interview.

11           B. Subsection A of this section does not require the employer to  
12 either:

13           1. Stop an interview to issue another notice for allegations based  
14 on information provided by the law enforcement officer during the  
15 interview.

16           2. Disclose any fact to the law enforcement officer or the law  
17 enforcement officer's representative that would impede the investigation.

18           C. Subsection A, paragraphs 1 and 2 of this section do not apply to  
19 an interview of a law enforcement officer that is:

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

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

25           3. Conducted during the course of a criminal investigation.

26           D. If, after an employer completes an investigation of a law  
27 enforcement officer, the employer seeks disciplinary action, at the request  
28 of the law enforcement officer, the employer shall provide a basic summary  
29 of any discipline ordered against any other law enforcement officer of  
30 generally similar rank and experience employed by the employer within the  
31 previous two years for the same or a similar violation. As an alternative,  
32 the employer may provide file copies of the relevant disciplinary

1 cases. The employer shall not take final action and the employer shall not  
2 schedule a hearing until the basic summary or file copies are provided to  
3 the law enforcement officer.

4 E. This section does not apply to a law enforcement officer who is  
5 employed by an agency of this state as an at will employee.

6 Sec. 2. Section 38-1105, Arizona Revised Statutes, is amended to  
7 read:

8 38-1105. Law enforcement officer as witness; right to  
9 representation; exception

10 A. If a law enforcement officer is designated as a witness by the  
11 law enforcement officer's employer in an investigation that could lead to  
12 another law enforcement officer's dismissal, demotion or suspension, the  
13 witness law enforcement officer may request to have a representative **OF THE**  
14 **WITNESS LAW ENFORCEMENT OFFICER'S CHOOSING TO BE** present ~~at no cost to the~~  
15 ~~employer~~ during the witness interview. ~~Unless agreed to by the employer,~~  
16 ~~the representative shall be from the same agency and shall not be an~~  
17 ~~attorney except that if a representative from the same agency is not~~  
18 ~~reasonably available, with the employer's permission, the witness law~~  
19 ~~enforcement officer's representative may be from the witness law~~  
20 ~~enforcement officer's professional membership organization.~~ The witness  
21 law enforcement officer's representative may take notes during the  
22 interview.

23 B. The witness law enforcement officer shall answer all questions  
24 asked by the law enforcement officer's department investigator, and  
25 information learned during a witness interview is considered proprietary  
26 and confidential by the employer and shall remain so until the witness law  
27 enforcement officer is served with a notice of investigation by the  
28 employer or the witness law enforcement officer is released from the  
29 confidentiality requirements of this section.

30 C. The witness law enforcement officer may discuss the law  
31 enforcement officer's witness interview with the witness law enforcement  
32 officer's representative or that representative's legal counsel. The

1 witness law enforcement officer, the witness law enforcement officer's  
2 representative or that representative's legal counsel may use the witness  
3 law enforcement ~~officer~~ OFFICER'S representative's notes only to assist the  
4 law enforcement officer in any investigation or disciplinary matter. Notes  
5 taken by the witness law enforcement officer, the witness law enforcement  
6 officer's representative or that representative's legal counsel do not  
7 constitute an official record of the interview. If the witness law  
8 enforcement officer or the witness law enforcement officer's representative  
9 releases information without authorization, the employer may subject the  
10 witness law enforcement officer or the witness law enforcement officer's  
11 representative to disciplinary action.

12 D. This section does not apply to a law enforcement officer who is  
13 employed by an agency of this state as an at will employee."

14 Amend title to conform

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C: AH