

PROPOSED AMENDMENT

SENATE AMENDMENTS TO H.B. 2645

(Reference to House engrossed bill)

1 Strike everything after the enacting clause and insert:

2 "Section 1. Section 12-2101, Arizona Revised Statutes, is amended to
3 read:

4 12-2101. Judgments and orders that may be appealed

5 A. An appeal may be taken to the court of appeals from the superior
6 court in the FOLLOWING instances ~~specified in this section.:~~

7 ~~B.~~ 1. From a final judgment entered in an action or special
8 proceeding commenced in a superior court, or brought into a superior court
9 from any other court, except in actions of forcible entry and detainer when
10 the annual rental value of the property is less than three hundred dollars.

11 ~~C.~~ 2. From any special order made after final judgment.

12 ~~D.~~ 3. From any order affecting a substantial right made in any action
13 when the order in effect determines the action and prevents judgment from
14 which an appeal might be taken.

15 ~~E.~~ 4. From a final order affecting a substantial right made in a
16 special proceeding or ~~upon~~ ON a summary application in an action after
17 judgment.

18 ~~F.~~ 5. From an order:

19 ~~1.~~ (a) Granting or refusing a new trial, or granting a motion in
20 arrest of judgment.

21 ~~2.~~ (b) Granting or dissolving an injunction, or refusing to grant or
22 dissolve an injunction or appointing a receiver.

23 ~~3.~~ (c) Dissolving or refusing to dissolve an attachment or
24 garnishment.

25 (d) GRANTING OR DENYING A PETITION TO RESTORE A PERSON'S RIGHT TO
26 POSSESS A FIREARM PURSUANT TO SECTION 13-925.

27 ~~G.~~ 6. From an interlocutory judgment ~~which~~ THAT determines the rights
28 of the parties and directs an accounting or other proceeding to determine the
29 amount of the recovery.

30 ~~H.~~ 7. From an interlocutory judgment in any action for partition
31 ~~which~~ THAT determines the rights and interests of the respective parties, and
32 directs partition to be made.

1 ~~I.~~ 8. From any interlocutory judgment, decree or order made or
2 entered in actions to redeem real or personal property from a mortgage
3 thereof or lien thereon, determining such right to redeem and directing an
4 accounting.

5 ~~J.~~ 9. From a judgment, decree or order entered in any formal
6 proceedings under title 14.

7 ~~K.~~ 10. From an order or judgment:

8 ~~1.~~ (a) Adjudging a person insane or incompetent, or committing a
9 person to the state hospital.

10 ~~2.~~ (b) Revoking or refusing to revoke an order or judgment adjudging
11 a person insane or incompetent, or restoring or refusing to restore to
12 competency any person who has been declared insane or incompetent.

13 ~~L.~~ 11. From an order or judgment made and entered on habeas corpus
14 proceedings:

15 ~~1.~~ (a) The petitioner may appeal from an order or judgment refusing
16 his discharge.

17 ~~2.~~ (b) The officer having the custody of the petitioner, or the
18 county attorney on behalf of the state, from an order or judgment discharging
19 the petitioner whereupon the court may admit the petitioner to bail pending
20 the appeal.

21 ~~M.~~ B. If any ~~of the orders~~ ORDER or ~~judgments~~ JUDGMENT referred to in
22 this section ~~are~~ IS made or rendered by a judge ~~they are~~ IT IS appealable as
23 if made by the court.

24 Sec. 2. Repeal

25 Section 13-925, Arizona Revised Statutes, is repealed.

26 Sec. 3. Title 13, chapter 9, Arizona Revised Statutes, is amended by
27 adding a new section 13-925, to read:

28 13-925. Restoration of right to possess a firearm; mentally ill
29 persons; petition

30 A. A PERSON MAY PETITION THE COURT THAT ENTERED AN ORDER, FINDING OR
31 ADJUDICATION THAT RESULTED IN THE PERSON BEING A PROHIBITED POSSESSOR AS
32 DEFINED IN SECTION 13-3101, SUBSECTION A, PARAGRAPH 7, SUBDIVISION (a) OR
33 SUBJECT TO 18 UNITED STATES CODE SECTION 922(d)(4) OR (g)(4) TO RESTORE THE
34 PERSON'S RIGHT TO POSSESS A FIREARM.

35 B. THE PERSON OR THE PERSON'S GUARDIAN OR ATTORNEY MAY FILE THE
36 PETITION. THE PETITION SHALL BE SERVED ON THE ATTORNEY FOR THE STATE WHO
37 APPEARED IN THE UNDERLYING CASE.

1 C. ON FILING OF THE PETITION THE COURT SHALL SET A HEARING. AT THE
2 HEARING, THE PERSON SHALL PRESENT PSYCHOLOGICAL OR PSYCHIATRIC EVIDENCE IN
3 SUPPORT OF THE PETITION. THE STATE SHALL PROVIDE THE COURT WITH THE PERSON'S
4 CRIMINAL HISTORY RECORDS, IF ANY. THE COURT SHALL RECEIVE EVIDENCE ON AND
5 CONSIDER THE FOLLOWING BEFORE GRANTING OR DENYING THE PETITION:

6 1. THE CIRCUMSTANCES THAT RESULTED IN THE PERSON BEING A PROHIBITED
7 POSSESSOR AS DEFINED IN SECTION 13-3101, SUBSECTION A, PARAGRAPH 7,
8 SUBDIVISION (a) OR SUBJECT TO 18 UNITED STATES CODE SECTION 922(d)(4) OR
9 (g)(4).

10 2. THE PERSON'S RECORD, INCLUDING THE PERSON'S MENTAL HEALTH RECORD
11 AND CRIMINAL HISTORY RECORD, IF ANY.

12 3. THE PERSON'S REPUTATION BASED ON CHARACTER WITNESS STATEMENTS,
13 TESTIMONY OR OTHER CHARACTER EVIDENCE.

14 4. WHETHER THE PERSON IS A DANGER TO SELF OR OTHERS, IS PERSISTENTLY,
15 ACUTELY OR GRAVELY DISABLED OR WHETHER THE CIRCUMSTANCES THAT LED TO THE
16 ORIGINAL ORDER, ADJUDICATION OR FINDING REMAIN IN EFFECT.

17 5. ANY CHANGE IN THE PERSON'S CONDITION OR CIRCUMSTANCES THAT IS
18 RELEVANT TO THE RELIEF SOUGHT.

19 6. ANY OTHER EVIDENCE DEEMED ADMISSIBLE BY THE COURT.

20 D. THE PETITIONER SHALL PROVE BY A PREPONDERANCE OF THE EVIDENCE BOTH
21 OF THE FOLLOWING:

22 1. THE PETITIONER IS NOT LIKELY TO ACT IN A MANNER THAT IS DANGEROUS
23 TO PUBLIC SAFETY.

24 2. GRANTING THE REQUESTED RELIEF IS NOT CONTRARY TO THE PUBLIC
25 INTEREST.

26 E. AT THE CONCLUSION OF THE HEARING, THE COURT SHALL ISSUE FINDINGS OF
27 FACT AND CONCLUSIONS OF LAW.

28 F. IF THE COURT GRANTS THE PETITION FOR RELIEF, THE ORIGINAL ORDER,
29 FINDING OR ADJUDICATION IS DEEMED NOT TO HAVE OCCURRED FOR THE PURPOSES OF
30 APPLYING SECTION 13-3101, SUBSECTION A, PARAGRAPH 7, SUBDIVISION (a), PUBLIC
31 LAW 110-180, SECTION 105(A) OR 18 UNITED STATES CODE SECTION 922(d)(4) OR
32 (g)(4) TO THAT PERSON.

33 G. THE GRANTING OF A PETITION UNDER THIS SECTION ONLY RESTORES THE
34 PERSON'S RIGHT TO POSSESS A FIREARM AND DOES NOT APPLY TO AND HAS NO AFFECT
35 ON ANY OTHER RIGHTS OR BENEFITS THE PERSON RECEIVES.

36 H. THE COURT SHALL PROMPTLY NOTIFY THE DEPARTMENT OF PUBLIC SAFETY OF
37 AN ORDER GRANTING A PETITION UNDER THIS SECTION. AS SOON THEREAFTER AS

1 PRACTICABLE THE DEPARTMENT SHALL UPDATE, CORRECT, MODIFY OR REMOVE THE
2 PERSON'S RECORD IN ANY DATABASE THAT THE DEPARTMENT MAINTAINS AND MAKES
3 AVAILABLE TO THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM CONSISTENT
4 WITH THE RULES PERTAINING TO THE DATABASE. WITHIN TEN BUSINESS DAYS AFTER
5 RECEIVING THE NOTIFICATION FROM THE COURT, THE DEPARTMENT SHALL NOTIFY THE
6 UNITED STATES ATTORNEY GENERAL THAT THE PERSON NO LONGER FALLS WITHIN THE
7 PROVISIONS OF SECTION 13-3101, SUBSECTION A, PARAGRAPH 7, SUBDIVISION (a) OR
8 18 UNITED STATES CODE SECTION 922(d)(4) OR (g)(4).

9 Sec. 4. Title 13, chapter 40, Arizona Revised Statutes, is amended by
10 adding section 13-4441, to read:

11 13-4441. Right to be heard on a petition to restore the right
12 to possess a firearm; notice

13 A. A VICTIM HAS THE RIGHT TO BE PRESENT AND BE HEARD AT ANY PROCEEDING
14 IN WHICH THE DEFENDANT HAS FILED A PETITION PURSUANT TO SECTION 13-925 TO
15 RESTORE THE DEFENDANT'S RIGHT TO POSSESS A FIREARM.

16 B. IF THE VICTIM HAS MADE A REQUEST FOR POSTCONVICTION NOTICE, THE
17 ATTORNEY FOR THE STATE SHALL PROVIDE NOTICE TO THE VICTIM AT LEAST FIVE DAYS
18 BEFORE THE HEARING.

19 Sec. 5. Section 38-1102, Arizona Revised Statutes, is amended to read:

20 38-1102. Carrying of firearms by peace officers; exceptions;
21 definitions

22 A. Notwithstanding any other law and except as provided pursuant to
23 subsection ~~B~~-C of this section, a peace officer shall not be prohibited from
24 carrying a firearm if the peace officer is in compliance with the firearm
25 requirements prescribed by the Arizona peace officer standards and training
26 board.

27 B. NOTWITHSTANDING ANY OTHER LAW AND EXCEPT AS PROVIDED PURSUANT TO
28 SUBSECTION C, PARAGRAPHS 1, 2, 4, 5, 6, 7 AND 8, A RETIRED PEACE OFFICER
29 SHALL NOT BE PROHIBITED FROM CARRYING A FIREARM.

30 ~~B~~-C. A peace officer OR RETIRED PEACE OFFICER may be prohibited from
31 carrying a firearm as follows:

- 32 1. In a jail, correctional facility or juvenile detention facility.
- 33 2. By order of:

34 (a) The presiding judge or justice when attending any court that is
35 established pursuant to the constitution of this state or title 12, except if
36 the peace officer OR RETIRED PEACE OFFICER is providing court security or
37 responding to an emergency.

1 (b) A justice court when attending the justice court, except if the
2 peace officer OR RETIRED PEACE OFFICER is providing court security or
3 responding to an emergency.

4 (c) A municipal court when attending the municipal court, except if
5 the peace officer OR RETIRED PEACE OFFICER is providing court security or
6 responding to an emergency.

7 3. When the peace officer is relieved of duty and is under a criminal
8 or administrative investigation.

9 4. When in a secured police facility.

10 5. When consuming alcohol at a licensed liquor establishment operated
11 by this state, a county, a city or town or any other political subdivision of
12 this state, except if ~~the~~ A peace officer's employing agency authorizes the
13 consumption of alcohol in the performance of the peace officer's duties.

14 6. In a location prohibited by federal law.

15 7. Pursuant to court order.

16 8. Pursuant to any state or federal law that makes the officer a
17 prohibited possessor.

18 9. When in the judgment of the department head, or the department
19 head's designee, the peace officer exhibits any impairment, including any
20 physical or mental impairment that would cause concern for the well-being and
21 safety of the officer, the officer's law enforcement agency, law enforcement
22 agency employees or the community.

23 ~~E.~~ D. A law enforcement agency that employs a peace officer may
24 establish rules that are consistent with this section. The law enforcement
25 agency may determine the number, type, model, caliber and brand of firearm
26 and the ammunition that is carried by its peace officers on or off duty.

27 ~~D.~~ E. This section does not create any civil liability for acting or
28 failing to act.

29 ~~E.~~ F. For the purposes of this section:

30 1. "Firearm" has the same meaning prescribed in section 13-105.

31 2. "Peace officer" has the same meaning prescribed in section 1-215.

32 3. "Relieved of duty" means when a peace officer is no longer required
33 to perform, either temporarily or permanently, the duties for which the
34 officer was employed.

35 4. "RETIRED PEACE OFFICER" MEANS A PERSON WHO HAS HONORABLY SERVED AS
36 A LAW ENFORCEMENT OFFICER IN THE UNITED STATES FOR AT LEAST TEN CONSECUTIVE
37 YEARS AND WHO POSSESSES A PHOTOGRAPHIC IDENTIFICATION OR A LETTER FROM A LAW

1 ENFORCEMENT AGENCY THAT STATES THE PERSON HAS SERVED FOR AT LEAST TEN
2 CONSECUTIVE YEARS AS A LAW ENFORCEMENT OFFICER IN THE UNITED STATES.

3 ~~4.~~ 5. "Secured police facility" means a building or structure that is
4 used primarily by a public agency and that is not accessible to the general
5 public except by controlled access."

6 Amend title to conform

RON GOULD

2645rg
03/10/2011
02:45 PM
C: sp