

COMMITTEE ON JUDICIARY  
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 CLEAR AND CONVINCING EVIDENCE BOTH OF  
21 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

3/14/11

3:40 PM

S: cs