House Engrossed Senate Bill

FILED

JANICE K. BREWER
SECRETARY OF STATE

State of Arizona
Senate
Forty-eighth Legislature
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CHAPTER 143

SENATE BILL 1085

AN ACT

AMENDING SECTIONS 11-445, 22-131, 22-132 AND 22-136, ARIZONA REVISED STATUTES; AMENDING TITLE 22, CHAPTER 1, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 22-137 AND 22-138; RELATING TO CONSTABLES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 11-445, Arizona Revised Statutes, is amended to read:

11-445. Fees chargeable in civil actions by sheriffs, constables and private process servers; authority of private process servers; background investigation; constables' logs

A. The sheriff shall receive the following fees in civil actions:

1. For serving each true copy of the original summons in a civil suit, sixteen dollars, except that the sheriff shall not charge a fee for service of any document pursuant to section 13-3602 or any injunction against harassment pursuant to section 12-1809 if the court indicates the injunction arises out of a dating relationship.

2. For summoning each witness, sixteen dollars.

3. For levying and returning each writ of attachment or claim and delivery, forty-eight dollars.

4. For taking and approving each bond and returning it to the proper court when necessary, twelve dollars.

5. For endorsing the forfeiture of any bond required to be endorsed by him, twelve dollars.

6. For levying each execution, twenty-four dollars.

7. For returning each execution, sixteen dollars.

8. For executing and returning each writ of possession or restitution, forty-eight dollars plus a rate of forty dollars per hour per deputy or constable for the actual time spent in excess of three hours.

9. For posting the advertisement for sale under execution, or any order of sale, twelve dollars.

10. For posting or serving any notice, process, writ, order, pleading or paper required or permitted by law, not otherwise provided for, sixteen dollars except that posting for a writ of restitution shall not exceed ten dollars.

11. For executing a deed to each purchaser of real property under execution or order of sale, twenty-four dollars.

12. For executing a bill of sale to each purchaser of real and personal property under an execution or order of sale, when demanded by the purchaser, sixteen dollars.

13. For services in designating a homestead or other exempt property, twelve dollars.

14. For receiving and paying money on redemption and issuing a certificate of redemption, twenty-four dollars.

15. For serving ~~and~~ returning each writ of garnishment and related papers, forty dollars.

16. For the preparation, including notarization, of each affidavit of service or other document pertaining to service, eight dollars.

17. For every writ served on behalf of a justice of the peace, a fee established by the board of supervisors not to exceed five dollars per writ ~~shall be established~~. Monies collected from the writ fees shall be deposited in the constable ethics ~~committee~~ STANDARDS AND TRAINING fund established by section ~~22-136~~ 22-138.

B. The sheriff shall also collect the appropriate recording fees if applicable and other appropriate disbursements.

C. The sheriff may charge:

1. Fifty-six dollars plus disbursements for any skip tracing services performed.

2. A reasonable fee for executing a civil arrest warrant ordered pursuant to court rule by a judge or justice of the peace. The fee shall only be charged to the party requesting the issuance of the civil arrest warrant.

3. A reasonable fee for storing personal property levied on pursuant to title 12, chapter 9.

D. For traveling to serve or on each attempt to serve civil process, writs, orders, pleadings or papers, the sheriff shall receive two dollars forty cents for each mile actually and necessarily traveled but, in any event, not to exceed two hundred miles, nor to be less than sixteen dollars. Mileage shall be charged one way only. For service made or attempted at the same time and place, regardless of the number of parties or the number of papers so served or attempted, only one charge for travel fees shall be made for such service or attempted service.

E. For collecting money on an execution when it is made by sale, the sheriff and the constable shall receive eight dollars for each one hundred dollars or major portion thereof not to exceed a total of two thousand dollars, but when money is collected by the sheriff without a sale, only one-half of such fee shall be allowed. When satisfaction or partial satisfaction of a judgment is received by the judgment creditor after the sheriff or constable has received an execution on the judgment, the commission is due the sheriff or constable and is established by an affidavit of the judgment creditor filed with the officer. If the affidavit is not lodged with the officer within thirty days of the request, the commission shall be based on the total amount of judgment due as billed by the officer and may be collected as any other debt by that officer.

F. The sheriff shall be allowed for all process issued from the supreme court and served by the sheriff the same fees as are allowed the sheriff for similar services ~~upon~~ ON process issued from the superior court.

G. The constable shall receive the same fees as the sheriff for performing the same services in civil actions, except that mileage shall be computed from the office of the justice of the peace originating the civil action to the place of service.

H. NOTWITHSTANDING SUBSECTION G OF THIS SECTION, IN A COUNTY WITH A POPULATION OF MORE THAN THREE MILLION PERSONS, IF AN OFFICE OF A JUSTICE OF

THE PEACE IS LOCATED OUTSIDE OF THE PRECINCT BOUNDARIES, THE MILEAGE FOR A CONSTABLE SHALL BE CALCULATED PURSUANT TO SUBSECTION D OF THIS SECTION, EXCEPT THAT THE DISTANCE BETWEEN THE PRECINCT BOUNDARIES AND THE OFFICE OF THE JUSTICE OF THE PEACE, AS DETERMINED BY THE COUNTY AND CERTIFIED BY THE BOARD OF SUPERVISORS OF THAT COUNTY, SHALL BE SUBTRACTED FROM THE MILEAGE CALCULATION. THIS CERTIFIED MILEAGE CALCULATION SHALL BE TRANSMITTED TO THE JUSTICE COURTS AND THE CLERKS OF THOSE COURTS SHALL CALCULATE THE MILEAGE BETWEEN THE OFFICE OF THE JUSTICE OF THE PEACE AND THE LOCATION WHERE THE CIVIL PROCESS, WRIT, ORDER, PLEADING OR PAPER WAS SERVED AND REDUCE THE MILEAGE USED TO CALCULATE THE MILEAGE FEE ACCORDING TO THE CERTIFIED MILEAGE CALCULATION FOR THAT RESPECTIVE JURISDICTION.

~~H.~~ I. Private process servers duly appointed or registered pursuant to rules established by the supreme court may serve all process, writs, orders, pleadings or papers required or permitted by law to be served ~~prior to~~ BEFORE, during or independently of a court action, including all such as are required or permitted to be served by a sheriff or constable, except writs or orders requiring the service officer to sell, deliver or take into the officer's custody persons or property, or as may otherwise be limited by rule established by the supreme court. A private process server is an officer of the court. As a condition of registration, the supreme court shall require each private process server applicant to furnish a full set of fingerprints to enable a criminal background investigation to be conducted to determine the suitability of the applicant. The completed applicant fingerprint card shall be submitted with the fee prescribed in section 41-1750 to the department of public safety. The applicant shall bear the cost of obtaining the applicant's criminal history record information. The cost shall not exceed the actual cost of obtaining the applicant's criminal history record information. Applicant criminal history records checks shall be conducted pursuant to section 41-1750 and Public Law 92-544. The department of public safety is authorized to exchange the submitted applicant fingerprint card information with the federal bureau of investigation for a federal criminal records check. A private process server may charge such fees for services as may be agreed ~~upon~~ ON between the process server and the party engaging the process server.

~~I.~~ J. Constables shall maintain a log of work related activities including a listing of all processes served and the number of processes attempted to be served by case number, the names of the plaintiffs and defendants, the names and addresses of the persons to be served except as otherwise precluded by law, the date of process and the daily mileage.

~~J.~~ K. The log maintained in subsection I of this section is a public record and shall be made available by the constable at the constable's office during regular office hours. Copies of the log shall be filed monthly with the clerk of the justice court and with the clerk of the board of supervisors.

Sec. 2. Section 22-131, Arizona Revised Statutes, is amended to read:

22-131. Constables; powers and duties

A. Constables shall attend the courts of justices of the peace within their precincts when required, and within their counties execute, serve and return all processes and notices directed or delivered to them by a justice of the peace of the county or by competent authority. In addition to any other provision of law these duties may be enforced by the presiding judge of the superior court in the county, including the use of the power of contempt.

~~B. The Arizona peace officer standards and training board shall approve a mandatory training course for constables covering topics including civil and criminal process, conflict resolution and firearm safety. Constables shall be required to attend the mandatory training course within six months after election. In subsequent years, constables shall annually attend at least eight hours of additional training approved by the Arizona peace officer standards and training board. Copies of certificates of completion of the constable training shall be forwarded to the clerk of the justice court and the clerk of the board of supervisors within thirty days after completion.~~

B. CONSTABLES SHALL ATTEND THE TRAINING PRESCRIBED IN SECTION 22-137.

C. Constables, with the consent of and at salaries fixed by the board of supervisors, may appoint deputies, stenographers, clerks and assistants necessary to conduct the affairs of their offices. The appointments shall be in writing and filed in the office of the county recorder.

D. The provisions of law relating to sheriffs, as far as applicable, shall govern the powers, duties and liabilities of constables.

Sec. 3. Section 22-132, Arizona Revised Statutes, is amended to read:

22-132. Expenses

Constables shall be allowed by the board of supervisors, as a county charge, the actual and necessary expenses incurred in training as required by section ~~22-131~~ 22-137, pursuing defendants, transacting business relating to civil and criminal matters~~,~~ and serving notices and processes, except that the allowable expenses for service of process in civil actions shall be as provided in section 11-445.

Sec. 4. Section 22-136, Arizona Revised Statutes, is amended to read:

22-136. Constable ethics standards and training board

A. A constable ethics ~~committee~~ STANDARDS AND TRAINING BOARD is established consisting of the following voting members:

1. Two constables from counties with a population of less than one million persons who are appointed by the Arizona association of counties.

2. Two constables from counties with a population of one million or more persons who are appointed by the Arizona association of counties.

3. One justice of the peace who is appointed by the chief justice of the supreme court.

4. One county administrator or designee who is appointed by the county supervisors association.

5. One sheriff who is appointed by the governor.

6. One member of the public who is appointed by the governor.

7. One board member of the Arizona multihousing association who is appointed by the governor.

B. The ~~committee~~ BOARD shall annually elect a chairperson, VICE-CHAIRPERSON AND SECRETARY from among its members. ~~The committee shall adopt a constable code of conduct that addresses attendance at mandatory training and rules of procedure.~~ THE CHAIRPERSON MAY ESTABLISH COMMITTEES TO ASSIST AND ADVISE THE BOARD IN CARRYING OUT ITS RESPONSIBILITIES. A MAJORITY OF THE BOARD CONSTITUTES A QUORUM AND A MAJORITY VOTE OF THE QUORUM IS NECESSARY FOR THE BOARD TO TAKE ANY ACTION.

C. Terms of the ~~committee~~ BOARD members are four years~~, except that the initial terms of two constables, the county administrator and the sheriff are two years~~. If a member ceases to hold the position that qualified the member for the appointment, the member's membership terminates and the appointing authority pursuant to subsection A of this section fills the vacancy for the unexpired term.

~~D. The committee shall hear and investigate written complaints from any person involving a constable's ethical or personal conduct. The committee shall attempt to remedy a constable's inappropriate behavior by:~~

~~1. Mediating.~~

~~2. Issuing warnings, reprimands or admonishments.~~

~~3. Instructing constables to take particular action to correct behavior or to take educational courses.~~

~~4. Urging a constable to retire from office.~~

~~E. If the committee is not satisfied with the remedies prescribed by subsection D of this section the committee shall submit a report to the county attorney's office in the county in which the conduct at issue occurred.~~

~~F. A constable ethics committee fund is established consisting of monies received from writ fees collected pursuant to section 11-445, subsection A, paragraph 17. The constable ethics committee shall administer the fund subject to legislative appropriation. On notice from the committee, the state treasurer shall invest and divest monies in the fund as provided in section 35-313, and monies earned from investment shall be credited to the fund. The fund is exempt from the provisions of section 35-190 relating to lapsing of appropriations. The committee shall use:~~

~~1. Eighty per cent of the monies appropriated from the fund for constable training, equipment and related grants.~~

~~2. Twenty per cent of the monies appropriated from the fund for operating expenses of the committee.~~

D. MEMBERS OF THE BOARD ARE NOT ELIGIBLE TO RECEIVE COMPENSATION BUT ARE ELIGIBLE FOR REIMBURSEMENT OF EXPENSES PURSUANT TO TITLE 38, CHAPTER 4, ARTICLE 2.

Sec. 5. Title 22, chapter 1, article 3, Arizona Revised Statutes, is amended by adding sections 22-137 and 22-138, to read:

22-137. Constable ethics standards and training board; powers and duties; constable training

A. THE CONSTABLE ETHICS STANDARDS AND TRAINING BOARD SHALL:

1. ADOPT RULES FOR THE ADMINISTRATION AND CONDUCT OF THE BOARD, INCLUDING MEETING TIMES, MEETING PLACES AND MATTERS TO BE PLACED ON THE AGENDA OF EACH MEETING, AND FOR THE DISTRIBUTION OF MONIES IN THE CONSTABLE ETHICS STANDARDS AND TRAINING FUND PURSUANT TO SECTION 22-138.

2. ADOPT A CODE OF CONDUCT FOR CONSTABLES AND ADOPT RULES TO ENFORCE THE CODE OF CONDUCT.

3. ESTABLISH PROCEDURES FOR CONDUCTING CONFIDENTIAL INVESTIGATIONS AND HOLDING HEARINGS.

4. HEAR AND INVESTIGATE WRITTEN COMPLAINTS FROM ANY PERSON INVOLVING A CONSTABLE'S ETHICAL CONDUCT.

5. REMEDY A CONSTABLE'S INAPPROPRIATE BEHAVIOR BY:

(a) MEDIATING.

(b) ISSUING WARNINGS, REPRIMANDS OR ADMONISHMENTS.

(c) INSTRUCTING CONSTABLES TO TAKE A PARTICULAR ACTION OR TO TAKE EDUCATIONAL CLASSES.

(d) URGING A CONSTABLE TO RETIRE FROM OFFICE.

B. THE BOARD MAY:

1. EMPLOY AN EXECUTIVE DIRECTOR AND OTHER STAFF NECESSARY TO FULFILL THE POWERS AND DUTIES OF THE BOARD.

2. ENTER INTO CONTRACTS AND INTERAGENCY AGREEMENTS TO CARRY OUT ITS POWERS AND DUTIES.

3. CERTIFY ORGANIZATIONS TO PROVIDE TRAINING AND SUPPORT PROGRAMS FOR CONSTABLES.

4. PROVIDE SUPPORT GRANTS TO CONSTABLES FOR LOCAL OR STATEWIDE TRAINING PROGRAMS.

5. TAKE AND HEAR EVIDENCE, ADMINISTER OATHS AND AFFIRMATIONS AND COMPEL BY SUBPOENA THE ATTENDANCE OF WITNESSES AND THE PRODUCTION OF BOOKS, PAPERS, RECORDS, DOCUMENTS AND OTHER INFORMATION RELATING TO ANY INVESTIGATION OR HEARING.

C. IF THE BOARD IS NOT SATISFIED WITH THE REMEDIES PRESCRIBED IN SUBSECTION A, PARAGRAPH 5 OF THIS SECTION THE BOARD SHALL SUBMIT A REPORT TO THE COUNTY ATTORNEY'S OFFICE IN THE COUNTY IN WHICH THE CONDUCT AT ISSUE OCCURRED.

D. THE ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD SHALL APPROVE A MANDATORY BASIC TRAINING COURSE FOR NEWLY ELECTED CONSTABLES COVERING TOPICS INCLUDING CIVIL AND CRIMINAL PROCESS, CONFLICT RESOLUTION AND FIREARM SAFETY. CONSTABLES MUST ATTEND THE MANDATORY TRAINING COURSE WITHIN SIX MONTHS AFTER ELECTION. IN SUBSEQUENT YEARS, CONSTABLES MUST ANNUALLY ATTEND AT LEAST EIGHT HOURS OF ADDITIONAL TRAINING APPROVED BY THE ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD. COPIES OF CERTIFICATES OF

COMPLETION OF THE CONSTABLE TRAINING SHALL BE FORWARDED TO THE CONSTABLE ETHICS STANDARDS AND TRAINING BOARD WITHIN THIRTY DAYS AFTER COMPLETION.

E. THIS SECTION DOES NOT CREATE A CAUSE OF ACTION OR A RIGHT TO BRING AN ACTION AGAINST THE BOARD.

22-138. Constable ethics standards and training fund; budget

A. A CONSTABLE ETHICS STANDARDS AND TRAINING FUND IS ESTABLISHED CONSISTING OF MONIES RECEIVED FROM WRIT FEES COLLECTED PURSUANT TO SECTION 11-445, SUBSECTION A, PARAGRAPH 17. THE CONSTABLE ETHICS STANDARDS AND TRAINING BOARD SHALL ADMINISTER THE FUND. ON NOTICE FROM THE BOARD, THE STATE TREASURER SHALL INVEST AND DIVEST MONIES IN THE FUND PURSUANT TO SECTION 35-313, AND MONIES EARNED FROM INVESTMENT SHALL BE CREDITED TO THE FUND. MONIES IN THE FUND ARE EXEMPT FROM THE PROVISIONS OF SECTION 35-190 RELATING TO LAPSING OF APPROPRIATIONS AND ARE CONTINUOUSLY APPROPRIATED TO THE BOARD FOR THE PURPOSES OF THIS SECTION.

B. THE CONSTABLE ETHICS STANDARDS AND TRAINING BOARD SHALL USE:

1. EIGHTY PER CENT OF THE MONIES APPROPRIATED FROM THE FUND FOR CONSTABLE TRAINING, EQUIPMENT AND RELATED GRANTS.

2. TWENTY PER CENT OF THE MONIES APPROPRIATED FROM THE FUND FOR OPERATING EXPENSES OF THE BOARD.

C. ON OR BEFORE JULY 1 OF EACH YEAR, THE BOARD SHALL ADOPT A BUDGET. THE BUDGET IS EFFECTIVE ON THE APPROVAL OF THE BOARD.

Sec. 6. Transfer of fund monies

On the effective date of this act, all monies in the constable ethics committee fund established by section 22-136, Arizona Revised Statutes, are transferred to the constable ethics standards and training board fund established by section 22-138, Arizona Revised Statutes, as added by this act.

Sec. 7. Retention of members

All persons serving as members of the constable ethics committee on the effective date of this act may continue to serve on the constable ethics standards and training board established by this act until the expiration of their normal terms. The appointing authority shall make all subsequent appointments as prescribed by statute.

APPROVED BY THE GOVERNOR APRIL 27, 2007.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 27, 2007.