

REFERENCE TITLE: injunction against harassment; fees

State of Arizona
Senate
Forty-ninth Legislature
Second Regular Session
2010

SB 1084

Introduced by
Senator Gray L

AN ACT

AMENDING SECTION 12-1809, ARIZONA REVISED STATUTES; RELATING TO INJUNCTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 12-1809, Arizona Revised Statutes, is amended to
3 read:

4 12-1809. Injunction against harassment; petition; venue; fees;
5 notices; enforcement; definition

6 A. A person may file a verified petition with a magistrate, justice of
7 the peace or superior court judge for an injunction prohibiting harassment.
8 If the person is a minor, the parent, legal guardian or person who has legal
9 custody of the minor shall file the petition unless the court determines
10 otherwise. The petition shall name the parent, guardian or custodian as the
11 plaintiff, and the minor is a specifically designated person for the purposes
12 of subsection F of this section. If a person is either temporarily or
13 permanently unable to request an injunction, a third party may request an
14 injunction on behalf of the plaintiff. After the request, the judicial
15 officer shall determine if the third party is an appropriate requesting party
16 for the plaintiff. Notwithstanding the location of the plaintiff or
17 defendant, any court in this state may issue or enforce an injunction against
18 harassment.

19 B. An injunction against harassment shall not be granted:

20 1. Unless the party who requests the injunction files a written
21 verified petition for injunction.

22 2. Against a person who is less than twelve years of age unless the
23 injunction is granted by the juvenile division of the superior court.

24 3. Against more than one defendant.

25 C. The petition shall state all of the following:

26 1. The name of the plaintiff. The plaintiff's address shall be
27 disclosed to the court for purposes of service. If the address of the
28 plaintiff is unknown to the defendant, the plaintiff may request that the
29 address be protected. On the plaintiff's request, the address shall not be
30 listed on the petition. Whether the court issues an injunction against
31 harassment, the protected address shall be maintained in a separate document
32 or automated database and is not subject to release or disclosure by the
33 court or any form of public access except as ordered by the court.

34 2. The name and address, if known, of the defendant.

35 3. A specific statement showing events and dates of the acts
36 constituting the alleged harassment.

37 4. The name of the court in which there was or is any prior or pending
38 proceeding or order concerning the conduct that is sought to be restrained.

39 5. The relief requested.

40 D. A fee shall not be charged for filing a petition under this
41 section. Fees for service of process may be deferred or waived under any
42 rule or law applicable to civil actions, ~~except that fees for service of~~
43 ~~process shall not be charged if the petition arises out of a dating~~
44 ~~relationship~~. The court shall advise a plaintiff that the plaintiff may be
45 eligible for the deferral or waiver of these fees at the time the plaintiff

1 files a petition. The court shall not require the petitioner to perform
2 community restitution as a condition of the waiver or deferral of fees for
3 service of process. A law enforcement agency or constable shall not require
4 the advance payment of fees for service of process of injunctions against
5 harassment. If the court does not waive the fees, the serving agency may
6 assess the actual fees against the plaintiff. On request of the plaintiff,
7 an injunction against harassment that is issued by a municipal court may be
8 served by the police agency for that city if the defendant can be served
9 within the city. If the defendant cannot be served within the city, the
10 police agency in the city in which the defendant can be served may serve the
11 injunction. On request of the plaintiff, each injunction against harassment
12 that is issued by a justice of the peace shall be served by the constable for
13 that jurisdiction if the defendant can be served within the jurisdiction. If
14 the defendant cannot be served within that jurisdiction, the constable in the
15 jurisdiction in which the defendant can be served shall serve the injunction.
16 On request of the plaintiff, an injunction against harassment that is issued
17 by a superior court judge or commissioner may be served by the sheriff of the
18 county. If the defendant cannot be served within that jurisdiction, the
19 sheriff in the jurisdiction in which the defendant can be served may serve
20 the order. The court shall provide, without charge, forms for purposes of
21 this section for assisting parties without counsel.

22 E. The court shall review the petition, any other pleadings on file
23 and any evidence offered by the plaintiff, including any evidence of
24 harassment by electronic contact or communication, to determine whether the
25 injunction requested should issue without a further hearing. Rules 65(a)(1)
26 and 65(e) of the Arizona rules of civil procedure do not apply to injunctions
27 that are requested pursuant to this section. If the court finds reasonable
28 evidence of harassment of the plaintiff by the defendant during the year
29 preceding the filing of the petition or that good cause exists to believe
30 that great or irreparable harm would result to the plaintiff if the
31 injunction is not granted before the defendant or the defendant's attorney
32 can be heard in opposition and the court finds specific facts attesting to
33 the plaintiff's efforts to give notice to the defendant or reasons supporting
34 the plaintiff's claim that notice should not be given, the court shall issue
35 an injunction as provided for in subsection F of this section. If the court
36 denies the requested relief, it may schedule a further hearing within ten
37 days with reasonable notice to the defendant. For the purposes of
38 determining the one year period, any time that the defendant has been
39 incarcerated or out of this state shall not be counted.

40 F. If the court issues an injunction, the court may do any of the
41 following:

- 42 1. Enjoin the defendant from committing a violation of one or more
43 acts of harassment.
- 44 2. Restrain the defendant from contacting the plaintiff or other
45 specifically designated persons and from coming near the residence, place of

1 employment or school of the plaintiff or other specifically designated
2 locations or persons.

3 3. Grant relief necessary for the protection of the alleged victim and
4 other specifically designated persons proper under the circumstances.

5 G. The court shall not grant a mutual injunction against harassment.
6 If opposing parties separately file verified petitions for an injunction
7 against harassment, the courts after consultation between the judicial
8 officers involved may consolidate the petitions of the opposing parties for
9 hearing. This does not prohibit a court from issuing cross injunctions
10 against harassment.

11 H. At any time during the period during which the injunction is in
12 effect, the defendant is entitled to one hearing on written request. No fee
13 may be charged for requesting a hearing. A hearing that is requested by a
14 defendant shall be held within ten days from the date requested unless the
15 court finds compelling reasons to continue the hearing. The hearing shall be
16 held at the earliest possible time. An ex parte injunction that is issued
17 under this section shall state on its face that the defendant is entitled to
18 a hearing on written request and shall include the name and address of the
19 judicial office where the request may be filed. After the hearing, the court
20 may modify, quash or continue the injunction.

21 I. The injunction shall include the following statement:

22 Warning

23 This is an official court order. If you disobey this
24 order, you may be arrested and prosecuted for the crime of
25 interfering with judicial proceedings and any other crime you
26 may have committed in disobeying this order.

27 J. A copy of the petition and the injunction shall be served on the
28 defendant within one year from the date the injunction is signed. An
29 injunction that is not served on the defendant within one year expires. The
30 injunction is effective on the defendant on service of a copy of the
31 injunction and petition and expires one year after service on the defendant.
32 A modified injunction is effective upon service and expires one year after
33 service of the initial injunction and petition.

34 K. Each affidavit, acceptance or return of service shall be promptly
35 filed with the clerk of the issuing court. This filing shall be completed in
36 person, shall be made by fax or shall be postmarked, if sent by mail, no
37 later than the end of the seventh court business day after the date of
38 service. If the filing is made by fax, the original affidavit, acceptance or
39 return of service shall be promptly filed with the court. Within twenty-four
40 hours after the affidavit, acceptance or return of service has been filed,
41 excluding weekends and holidays, the court from which the injunction or any
42 modified injunction was issued shall forward to the sheriff of the county in
43 which the court is located a copy of the injunction and a copy of the
44 affidavit or certificate of service of process or acceptance of service. On
45 receiving these copies, the sheriff shall register the injunction.

1 Registration of an injunction means that a copy of the injunction and a copy
 2 of the affidavit or certificate of service of process or acceptance of
 3 service have been received by the sheriff's office. The sheriff shall
 4 maintain a central repository for injunctions so that the existence and
 5 validity of the injunctions can be easily verified. The effectiveness of an
 6 injunction does not depend on its registration, and for enforcement purposes
 7 pursuant to section 13-2810, a copy of an injunction, whether or not
 8 registered, is presumed to be a valid existing order of the court for a
 9 period of one year from the date of service of the injunction on the
 10 defendant.

11 L. A peace officer, with or without a warrant, may arrest a person if
 12 the peace officer has probable cause to believe that the person has violated
 13 section 13-2810 by disobeying or resisting an injunction that is issued
 14 pursuant to this section, whether or not the violation occurred in the
 15 presence of the officer. The provisions for release under section 13-3903 do
 16 not apply to an arrest made pursuant to this subsection. A person who is
 17 arrested pursuant to this subsection may be released from custody in
 18 accordance with the Arizona rules of criminal procedure or any other
 19 applicable statute. An order for release, with or without an appearance
 20 bond, shall include pretrial release conditions that are necessary to provide
 21 for the protection of the alleged victim and other specifically designated
 22 persons and may provide for additional conditions that the court deems
 23 appropriate, including participation in any counseling programs available to
 24 the defendant.

25 M. If a peace officer responds to a call alleging that harassment has
 26 been or may be committed, the officer shall inform in writing any alleged or
 27 potential victim of the procedures and resources available for the protection
 28 of the victim including:

- 29 1. An injunction pursuant to this section.
- 30 2. The emergency telephone number for the local police agency.
- 31 3. Telephone numbers for emergency services in the local community.

32 N. The remedies provided in this section for enforcement of the orders
 33 of the court are in addition to any other civil and criminal remedies
 34 available. The municipal court and the justice court may hear and decide all
 35 matters arising pursuant to this section. After a hearing with notice to the
 36 affected party, the court may enter an order requiring any party to pay the
 37 costs of the action, including reasonable attorney fees, if any. An order
 38 that is entered by a justice court or municipal court after a hearing
 39 pursuant to this section may be appealed to the superior court as provided in
 40 title 22, chapter 2, article 4, section 22-425, subsection B and the superior
 41 court rules of civil appellate procedure without regard to an amount in
 42 controversy. No fee may be charged to either party for filing an appeal.

43 O. A peace officer who makes an arrest pursuant to this section is not
 44 civilly or criminally liable for the arrest if the officer acts on probable

1 cause and without malice. A peace officer is not civilly liable for
2 noncompliance with subsection M of this section.

3 P. This section does not apply to preliminary injunctions issued
4 pursuant to an action for dissolution of marriage or legal separation or for
5 protective orders against domestic violence.

6 Q. In addition to the persons who are authorized to serve process
7 pursuant to rule 4(d), Arizona rules of civil procedure, a peace officer or a
8 correctional officer as defined in section 41-1661 who is acting in the
9 officer's official capacity may serve an injunction against harassment that
10 is issued pursuant to this section.

11 R. For the purposes of this section, "harassment" means a series of
12 acts over any period of time that is directed at a specific person and that
13 would cause a reasonable person to be seriously alarmed, annoyed or harassed
14 and the conduct in fact seriously alarms, annoys or harasses the person and
15 serves no legitimate purpose.