Senate Engrossed

FILED

JANICE K. BREWER
SECRETARY OF STATE

State of Arizona
Senate
Forty-eighth Legislature
First Regular Session
2007

CHAPTER 137

SENATE BILL 1445

AN ACT

AMENDING SECTIONS 13-4202, 41-2752, 41-2804, 41-2822 AND 41-2826, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 26, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 41-2827 AND 41-2828; RELATING TO THE DEPARTMENT OF JUVENILE CORRECTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 13-4202, Arizona Revised Statutes, is amended to read:

13-4202. Void contracts; crime victim accounts; establishment; notice to victims; exceptions; civil liability; definition

A. Every contract, whether written or oral, express or implied, with an accused with respect to the reenactment, description or depiction of a crime by movie, book, article, radio or television presentation, internet or on-line presentation or depiction, live entertainment or expression of thoughts, feelings, opinions or emotions is contrary to public policy and void unless the contract provides for payment to the commission of any monies ~~which~~ THAT would be paid to the accused for such information or rights.

B. The commission shall deposit the monies received pursuant to subsection A from the contracts or agreements of each accused, for each crime committed by the accused, in a separate account designated as a crime victim account. The money shall be distributed as determined by the commission to any victim of the crime committed by the accused if both of the following apply:

1. The accused is convicted of OR ADJUDICATED DELINQUENT FOR the crime.

2. The victim, within five years after the date of establishment of the account, applies to the commission for compensation and demonstrates by sufficient reliable evidence, as determined by the commission, that the victim has suffered a loss resulting from such crime and the amount of such loss.

C. The commission, at least once every year for five years from the date of receipt of monies pursuant to subsection B, shall publish a legal notice in a newspaper of general circulation in the county ~~wherein~~ IN WHICH the crime was committed and in counties contiguous to such county advising all victims for which monies have been received that funds are available to satisfy money judgments pursuant to this section. ~~Such~~ THE notice shall identify the accused, describe the criminal act involved and the proceedings against the accused and state the procedure to be followed for recovery of monies pursuant to subsection B. No reference to the identity of the victim shall be made. The commission ~~may~~, in its discretion, MAY provide for such additional notice as it deems necessary.

D. ~~Upon~~ ON disposition of charges favorable to an accused, the commission shall immediately pay any monies in the account owing to such person.

E. After five years have elapsed following the establishment of the account pursuant to subsection B and ~~upon~~ ON a showing that no applications for compensation are pending pursuant to this section, the commission shall immediately pay any monies in the account to the state general fund.

F. For THE purposes of this section, a person WHO IS found guilty except insane pursuant to rule 23.2, Arizona rules of criminal procedure, ~~shall be~~ IS deemed to be a convicted person.

G. ~~Whenever~~ IF it is found, pursuant to rule 11, Arizona rules of criminal procedure, that a person WHO IS accused of a crime is unfit to proceed as a result of A mental illness or defect because ~~such~~ THE person lacks THE capacity to understand the proceedings against the person or to assist in the person's own defense, the commission shall bring an action of interpleader pursuant to rule 22, Arizona rules of civil procedure, to determine disposition of the escrow account.

H. Notwithstanding any ~~inconsistent provision of~~ law ~~or of the rules of civil procedure with respect to the timely bringing of an action~~ TO THE CONTRARY, the five-year period provided for in subsection B ~~shall~~ DOES not begin to run until an account ~~has been~~ IS established.

I. Notwithstanding subsections B through F the commission shall make payments from the account to any accused ~~upon~~ ON the order of a court of competent jurisdiction after a showing by the accused that the money will be used for the sole purpose of retaining legal representation at any stage of THE proceedings against ~~such~~ THE accused.

J. An action taken by any person, whether by execution of a power of attorney, creation of a corporate entity or otherwise, to defeat the purpose of this section shall be null and void as against the public policy of this state.

K. The cost of administering the account and ~~the~~ monies ~~therein~~ IN THE ACCOUNT shall be reimbursed to the industrial commission from the account.

L. Any person ~~entering~~ WHO ENTERS into a contract described in subsection A ~~which~~ THAT does not comply with this section shall be liable to the state for deposit in the crime victim account of an amount equal to all monies paid or received including monies paid to or received by another person by execution of a power of attorney, creation of a corporate entity or otherwise, WHICH EXECUTION WAS done to defeat the purposes of this section.

M. For THE purposes of this section, "loss" includes the value of any property damaged, destroyed or taken, the cost of medical treatment or counseling, lost wages and any other damage suffered as a result of the crime.

Sec. 2. Section 41-2752, Arizona Revised Statutes, is amended to read:

41-2752. <u>State competition with private enterprise prohibited; exceptions</u>

A. A state agency shall not engage in the manufacturing, processing, sale, offering for sale, rental, leasing, delivery, dispensing, distributing or advertising of goods or services to the public that are also offered by private enterprise unless specifically authorized by law other than administrative law and executive orders.

B. A state agency shall not offer or provide goods or services to the public for or through another state agency or a local agency, including by

intergovernmental or interagency agreement, in violation of this section or section 41-2753.

C. The restrictions on activities that compete with private enterprise contained in this section do not apply to:

1. The development, operation and management of state parks, historical monuments and hiking or equestrian trails.

2. Correctional industries established and operated by the state department of corrections ~~providing~~ IF the prices charged for products sold by the correctional industries are not less than the actual cost of producing and marketing the product plus a reasonable allowance for overhead and administrative costs.

3. The Arizona office of tourism.

4. The Arizona highways magazine, operated by the department of transportation.

5. Printing and distributing information to the public if the agency is otherwise authorized to do so, and printing or copying public records or other material relating to the public agency's public business and recovering through fees and charges the costs of such printing, copying and ~~distribution~~ DISTRIBUTING.

6. The department of public safety.

7. The construction, maintenance and operation of state transportation facilities.

8. The development, distribution, maintenance, support, licensing, leasing or sale of computer software by the department of transportation.

9. Agreements executed by the Arizona health care cost containment system administration with other states to design, develop, install and operate information technology systems and related services or other administrative services pursuant to section 36-2925.

10. Agreements executed by the department of economic security with other states to design, develop, install and operate support collection technology systems and related services. The department shall deposit, pursuant to sections 35-146 and 35-147, monies received pursuant to this paragraph in the public assistance collections fund established by section 46-295.

11. EDUCATIONAL, VOCATIONAL, TREATMENT, TRAINING OR WORK PROGRAMS OF THE DEPARTMENT OF JUVENILE CORRECTIONS AND contracts between the department of juvenile corrections and this state, a political subdivision of this state or a private entity in order to provide employment or vocational educational experience.

12. The aflatoxin control technologies of the cotton research and protection council.

13. The lease or sublease of lands or buildings by the department of economic security pursuant to section 41-1958.

D. The restrictions on activities that compete with private enterprise contained in subsection A of this section do not apply to community colleges and universities under the jurisdiction of a governing board.

Sec. 3. Section 41-2804, Arizona Revised Statutes, is amended to read:

41-2804. Duties and powers of director

A. The director shall:

1. Be responsible for the overall operations and policies of the department.

2. Maintain and administer all secure care facilities and programs within the department required and established for the custody, control, treatment, education and rehabilitation of all ~~youth~~ YOUTHS committed to the department.

3. Be responsible for the administration and execution of all conditional liberty services for ~~youth~~ YOUTHS released pursuant to rules adopted by the director in accordance with law.

4. Be responsible for the development of policies and programs which shall be recommended to the governor and the legislature for the purpose of improving the youth rehabilitative and treatment programs of this state.

5. Develop and establish a uniform statewide method of reporting statistics as related to this chapter.

6. Employ deputy directors and other key personnel based on qualifications prescribed by the director which require education and practical experience.

B. The director may:

1. Adopt rules to implement the purposes of the department and the duties and powers of the director.

2. Take any administrative action to improve the efficiency of the department, including the following:

(a) Create new divisions or units or consolidate divisions or units.

(b) Transfer employees between the various divisions and units of the department.

(c) Shift duties between divisions or units.

(d) Delegate authority to appoint, hire, terminate and discipline all personnel of the department, including specialists and consultants.

(e) Transfer committed ~~youth~~ YOUTHS between secure care facilities.

(f) Transfer ~~youth~~ YOUTHS who have been committed to the department or to any facility under its jurisdiction between the various secure care facilities for youths, foster homes and public and private agencies on notification to the committing court.

(g) Appoint certain employees of the department to peace officer status for purposes of guarding, transporting or pursuing persons under the jurisdiction of the department and appoint certain employees of the department to peace officer status for purposes of investigating or arresting persons who commit or attempt to commit offenses directly relating to the operations of the department.

3. Contract with other agencies or institutions in furtherance of any department program.

4. ADOPT GUIDELINES TO DISPOSE OF PROPERTY THAT IS NO LONGER NEEDED OR NECESSARY FOR USE IN A DEPARTMENT EDUCATIONAL, VOCATIONAL, TREATMENT, TRAINING OR WORK PROGRAM. THE DISPOSITION OF PROPERTY IS EXEMPT FROM CHAPTER 23, ARTICLE 8 OF THIS TITLE. ANY MONIES DERIVED FROM THE DISPOSITION OF THE PROPERTY SHALL BE DEPOSITED, PURSUANT TO SECTIONS 35-146 AND 35-147, IN THE DEPARTMENT OF JUVENILE CORRECTIONS CAREER TECHNICAL EDUCATION FUND ESTABLISHED BY SECTION 41-2828.

5. ACCEPT AND SPEND PRIVATE GRANTS OF MONIES TO EFFECTUATE THE PURPOSES OF SECTION 41-2827. MONIES COLLECTED PURSUANT TO THIS PARAGRAPH SHALL BE DEPOSITED AND ADMINISTERED PURSUANT TO SECTION 41-2828.

C. Peace officers of the department shall not preempt the authority and jurisdiction of established agencies of this state and political subdivisions of this state. Such officers shall notify agencies of this state and political subdivisions of this state before conducting an investigation within the jurisdiction of the agency and before making an arrest within the jurisdiction of the agency and shall ask, except in an emergency, if the agency wishes to participate, perform the investigation or arrest the person to be arrested before proceeding. Personnel appointed as peace officers by the director shall have the minimum qualifications established for peace officers pursuant to section 41-1822. Personnel appointed by the director pursuant to subsection B, paragraph 2, subdivision (g) of this section are not eligible to participate in funding provided by the peace officers' training fund established by section 41-1825 or in the public safety personnel retirement system except as otherwise provided in title 38, chapter 5, article 4.

Sec. 4. Section 41-2822, Arizona Revised Statutes, is amended to read:

41-2822. <u>Committed youth work program</u>

A. The director shall establish a committed youth work program for ~~youth~~ YOUTHS in secure care facilities and on conditional liberty to ensure that:

1. All committed ~~youth~~ YOUTHS in a secure care facility receive work assignments commensurate and compatible with the condition and limitations of the youth's physical and mental health.

2. Committed ~~youth~~ YOUTHS on conditional liberty, as a condition of liberty, may receive work assignments. All work assignments shall be commensurate and compatible with the condition and limitations of the youth's physical and mental health.

3. No committed youth in a secure care facility or on conditional liberty participates in a work assignment that threatens the safety and security of the public, a secure care facility or the committed youth.

B. A committed youth may be exempted from the work requirement if the staff determines that the exemption is necessary for the health, safety or treatment of the youth. The director or the director's authorized designee

shall review and approve each exemption of a committed youth from engaging in the work requirements of this section.

C. Notwithstanding title 23, chapter 2, article 3 relating to youth employment, each youth who is under commitment to the department, who is confined in a secure care facility under the department's jurisdiction and who is not regularly attending and making satisfactory progress in educational classes shall engage in work for at least forty hours a week unless exempted pursuant to subsection B of this section.

D. Each committed youth who is engaged in productive work while under the jurisdiction of the department may receive such compensation for the youth's work as the director ~~shall determine~~ DETERMINES. The compensation shall be in accordance with a graduated schedule based on quality and quantity of work performed and skill required for its performance.

E. The compensation of committed ~~youth~~ YOUTHS shall be paid directly by an outside entity or out of monies received pursuant to section 8-243 or monies appropriated by the legislature OR BY THE DEPARTMENT WITH MONIES FROM THE DEPARTMENT OF JUVENILE CORRECTIONS RESTITUTION FUND ESTABLISHED BY SECTION 41-2826.

F. A minimum of two-thirds of any compensation earned pursuant to this section by a committed youth in a secure care facility shall be paid to the clerk of the superior court to satisfy any juvenile court restitution order made pursuant to section 8-344. While a youth is on conditional liberty the department shall determine the amount of wages to be credited to restitution.

G. If a committed youth in a secure care facility is not subject to a restitution order but is subject to a monetary assessment by the court pursuant to section 8-341, subsection G or H, a minimum of two-thirds of any compensation earned shall be paid to the clerk of the superior court to satisfy the monetary assessment. While a youth is on conditional liberty the department shall determine the amount of wages to be credited to a monetary assessment.

H. If a committed youth in a secure care facility is not subject to a restitution order or a monetary assessment, two-thirds of any compensation earned pursuant to this section shall be used to defer the costs of room and board for maintaining the committed youth at the secure care facility.

I. The department shall require the payment of court ordered restitution, monetary reimbursements or assessments as a term of conditional liberty.

J. With the approval of the juvenile court and the victim, community restitution hours may be substituted for monetary restitution or monetary assessments at a rate deemed reasonable by the department.

K. The department may enter into contracts with this state, any political subdivision of this state or private entities in order to provide employment or vocational educational experience. Any revenues the department receives from the contracts shall be deposited, pursuant to sections 35-146 and 35-147, in the department of juvenile corrections ~~restitution fund~~

~~pursuant to section 41-2826~~ CAREER TECHNICAL EDUCATION FUND ESTABLISHED BY SECTION 41-2828 and shall be used in accordance with the purposes of the fund.

Sec. 5. Section 41-2826, Arizona Revised Statutes, is amended to read:

41-2826. Department of juvenile corrections restitution fund; report

A. The department of juvenile corrections restitution fund is established for the payment of restitution and monetary assessments by youths who are ordered to pay restitution or monetary assessments and who are financially unable to pay or who are otherwise unable to be employed to earn money to pay restitution or monetary assessments and who are working in the committed youth work program prescribed by section 41-2822 or the community work program established by section 41-2825. The fund consists of federal, state and local appropriations, MONIES DISTRIBUTED TO THE FUND PURSUANT TO SECTION 41-2828 and grants, gifts, devises and donations from any public or private source. The fund shall be used to pay a youth for the youth's work in the committed youth work program prescribed by section 41-2822 and to provide monies for the community work program established by section 41-2825.

B. The director may direct the payment of monies from the fund to the victim or the court for community restitution activities the youth does to pay restitution or monetary assessments that were ordered by the juvenile court or that the youth agreed to pay as part of a community work program administered by the department. If a youth performs community restitution pursuant to this subsection, the entity providing the work shall supervise the youth's work. The youth shall be credited for each hour worked at an hourly rate set by the director.

C. As monies are available, the department shall pay from the fund ~~youth~~ YOUTHS who perform work or community restitution activities for restitution and monetary assessments purposes.

D. The department may expend, for the payment of administrative costs and expenses, an amount not greater than ten per cent of the fund balance as of the end of the preceding fiscal year.

E. Monies in the fund are continuously appropriated and are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

F. On or before August 15~~, 2002, and~~ OF each year ~~thereafter~~, the department shall submit a report to the joint legislative budget committee detailing all revenues received by and expenditures made from the fund during the most recent fiscal year.

Sec. 6. Title 41, chapter 26, article 1, Arizona Revised Statutes, is amended by adding sections 41-2827 and 41-2828, to read:

41-2827. Products produced by committed youths; materials; disaffirmance; contracts

A. PRODUCTS THAT ARE PRODUCED BY COMMITTED YOUTHS PURSUANT TO AN EDUCATIONAL, VOCATIONAL, TREATMENT, TRAINING OR WORK PROGRAM ARE THE PROPERTY OF THE DEPARTMENT AND MAY BE MARKETED TO THE PUBLIC BY THE DEPARTMENT. ALL

PROCEEDS FROM THE SALE OF PRODUCTS THAT ARE PRODUCED BY COMMITTED YOUTHS SHALL BE DEPOSITED, PURSUANT TO SECTIONS 35-146 AND 35-147, IN THE DEPARTMENT OF JUVENILE CORRECTIONS CAREER TECHNICAL EDUCATION FUND ESTABLISHED BY SECTION 41-2828.

B. THE DEPARTMENT MAY PURCHASE RAW MATERIALS, COMPONENTS AND SUPPLIES FOR USE IN THE MANUFACTURE OF PRODUCTS IN A DEPARTMENT EDUCATIONAL, VOCATIONAL, TREATMENT, TRAINING OR WORK PROGRAM.

C. THE DEPARTMENT SHALL FIX AND DETERMINE THE PRICES AT WHICH ALL ARTICLES, SERVICES OR PRODUCTS THAT ARE MANUFACTURED OR PRODUCED SHALL BE FURNISHED OR SOLD. ALL ARTICLES OR PRODUCTS THAT ARE MANUFACTURED OR PRODUCED OR SERVICES THAT ARE PROVIDED THROUGH DEPARTMENT EDUCATIONAL, VOCATIONAL, TREATMENT, TRAINING OR WORK PROGRAMS SHALL BE PRICED AT NOT LESS THAN THE ACTUAL COST OF PRODUCING AND MARKETING THE PRODUCT PLUS A REASONABLE AMOUNT FOR OVERHEAD AND ADMINISTRATIVE COSTS AND A REASONABLE PROFIT TO PROVIDE FISCAL RESOURCES FOR THE RESEARCH AND DEVELOPMENT OF PROGRAMS FOR COMMITTED YOUTHS.

D. SALES OF PRODUCTS THAT ARE PRODUCED BY COMMITTED YOUTHS PURSUANT TO A DEPARTMENT EDUCATIONAL, VOCATIONAL, TREATMENT, TRAINING OR WORK PROGRAM ARE NOT SUBJECT TO DISAFFIRMANCE BECAUSE OF MINORITY.

E. THE DIRECTOR OR THE DIRECTOR'S DESIGNEE MAY CONTRACT WITH ANY STATE AGENCY, POLITICAL SUBDIVISION OR PRIVATE PERSON, FIRM, CORPORATION OR ASSOCIATION TO PROVIDE SERVICES OR PRODUCTS PRODUCED BY COMMITTED YOUTHS PURSUANT TO AN EDUCATIONAL, VOCATIONAL, TREATMENT, TRAINING OR WORK PROGRAM.

F. ALL MONIES DERIVED FROM CONTRACT SERVICES PROVIDED PURSUANT TO SUBSECTION E OF THIS SECTION SHALL BE DEPOSITED, PURSUANT TO SECTIONS 35-146 AND 35-147, IN THE DEPARTMENT OF JUVENILE CORRECTIONS CAREER TECHNICAL EDUCATION FUND ESTABLISHED BY SECTION 41-2828.

41-2828. <u>Department of juvenile corrections career technical education fund; definitions</u>

A. THE DEPARTMENT OF JUVENILE CORRECTIONS CAREER TECHNICAL EDUCATION FUND IS ESTABLISHED FOR THE PURPOSE OF PAYING EXPENSES THAT ARE REQUIRED FOR ANY EDUCATIONAL, VOCATIONAL, TREATMENT, TRAINING OR WORK PROGRAM ESTABLISHED BY THE DEPARTMENT, INCLUDING:

1. THE PURCHASE OF RAW MATERIALS, COMPONENTS AND SUPPLIES THAT ARE USED FOR THE PRODUCTION OF FOOD, GOODS AND OTHER ITEMS THAT ARE PRODUCED AND SOLD.

2. THE PURCHASE OR RENTAL OF EQUIPMENT.

3. THE CONSTRUCTION OR RECONSTRUCTION OF FACILITIES.

4. OPERATING EXPENSES AND IN-STATE TRAVEL.

5. THE INSTRUCTION OF COMMITTED YOUTHS IN THE PROGRAM.

6. THE MARKETING, TRANSPORTATION AND SALE OF FOOD, GOODS AND OTHER ITEMS THAT ARE PRODUCED AND SOLD.

B. MONIES RECEIVED FOR OR DERIVED FROM ANY DEPARTMENT EDUCATIONAL, VOCATIONAL, TREATMENT, TRAINING OR WORK PROGRAM, INCLUDING MONIES FROM THE SALE OF OBSOLETE OR UNNEEDED MATERIAL, SUPPLIES, EQUIPMENT OR PROPERTY, SHALL

1 BE DEPOSITED, PURSUANT TO SECTIONS 35-146 AND 35-147, IN THE CAREER TECHNICAL
2 EDUCATION FUND. THE FUND IS EXEMPT FROM THE PROVISIONS OF SECTION 35-190
3 RELATING TO LAPSING OF APPROPRIATIONS.
4 C. ON NOTICE FROM THE DIRECTOR, THE STATE TREASURER SHALL INVEST AND
5 DIVEST MONIES IN THE FUND AS PROVIDED BY SECTION 35-313, AND MONIES EARNED
6 FROM INVESTMENT SHALL BE CREDITED TO THE FUND.
7 D. MONIES IN THE FUND ARE CONTINUOUSLY APPROPRIATED AND THE DIRECTOR
8 MAY DEPOSIT MONIES FROM THE FUND IN THE DEPARTMENT OF JUVENILE CORRECTIONS
9 RESTITUTION FUND ESTABLISHED BY SECTION 41-2826.
10 E. FOR THE PURPOSES OF THIS SECTION:
11 1. "COMPONENTS" MEANS THE PARTS, SUBASSEMBLIES AND PACKAGING MATERIALS
12 THAT WILL BECOME PART OF A FINAL PRODUCT OR SERVICE.
13 2. "RAW MATERIALS" MEANS THE MATERIALS THAT ARE CONVERTED OR COMBINED
14 DURING THE MANUFACTURING PROCESS.

APPROVED BY THE GOVERNOR APRIL 24, 2007.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 24, 2007.

Passed the House April 17, 2007,

by the following vote: 57 Ayes,

1 Nays, 2 Not Voting

Speaker of the House

Chief Clerk of the House

Passed the Senate February 27, 2007,

by the following vote: 29 Ayes,

1 Nays, 0 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

18th day of April, 2007

at 12:26 o'clock P. M.

Secretary to the Governor

Approved this 24 day of

April, 2007,

at 9:30 o'clock A. M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 24 day of April, 2007,

at 11:30 o'clock A. M.

Secretary of State

S.B. 1445