House Engrossed Senate Bill

**FILED**

**JANICE K. BREWER**
**SECRETARY OF STATE**

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

CHAPTER 196

# SENATE BILL 1316

AN ACT

AMENDING SECTIONS 26-102, 36-446.04, 41-619.51, 41-1758 AND 41-1758.01, ARIZONA REVISED STATUTES; RELATING TO FINGERPRINTING REQUIREMENTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 26-102, Arizona Revised Statutes, is amended to read:

26-102. Powers and duties of the adjutant general

A. The adjutant general shall serve as head of the department. The governor as commander in chief shall administer and control the national guard, and the adjutant general is responsible to the governor for execution of all orders relating to the militia, organization, activation, reactivation, inactivation and allocation of units, recruiting of personnel, public relations and discipline and training of the national guard and those members of the militia inducted into the service of this state as provided in this chapter. The adjutant general shall act as military chief of staff to the governor and chief of all branches of the militia. The adjutant general may belong to the national association and other organizations for the betterment of the national guard, subscribe to and obtain periodicals, literature and magazines of such other organizations and pay dues and charges from monies of this state appropriated for that purpose. Except for the authority expressly reserved for the governor, the adjutant general is responsible for emergency management and all emergency activities are subject to the approval of the adjutant general.

B. The adjutant general, as the military chief of staff, shall:

1. Act as military advisor to the governor and perform, as the governor prescribes, military duties not otherwise designated by law.

2. Adopt methods of administration for the national guard that are not inconsistent with laws and regulations of the United States department of defense or any subdivision of the United States department of defense.

3. Supervise and direct the organization, regulation, instruction and other activities of the national guard.

4. Attest and record all commissions issued by the governor and maintain a register of all commissioned personnel.

5. Keep a record of all orders and regulations pertaining to the national guard and all other writings and papers relating to reports and returns of units comprising the national guard and militia.

6. Superintend the preparation of returns, plans and estimates required by this state, by the department of the army, air force or navy and by the secretary of defense.

7. Control the use of and care for, preserve and maintain all military property belonging to or issued to this state and pay from monies appropriated by the legislature for these purposes the necessary expenses for labor and material incurred in the repair of military property.

8. Dispose of unserviceable military property belonging to this state, account for the proceeds and transmit them to the morale, welfare and recreational fund established by section 26-153.

9. Authenticate with the seal of the office of the adjutant general all orders and copies of orders issued by the adjutant general's office. An authenticated copy has the same force and effect as the original.

10. Present to the governor before each regular session of the legislature, or as otherwise required, an estimate of the financial requirements for state monies for operation of the department and the national guard during the next fiscal year.

C. The adjutant general, as head of the department, shall:

1. Be the administrator of the department.

2. Coordinate the functions of the divisions and offices of the department.

3. Appoint, suspend, demote, promote or dismiss employees of the department WHO ARE subject to ~~the provisions of~~ title 41, chapter 4, article 5 and employees who are exempt from state personnel administration. The adjutant general may delegate this authority.

4. Appoint an auditor for the department to conduct periodic financial and compliance audits of each division and office in the department and perform such other duties as prescribed by law. At least annually the auditor shall audit accounts that are open for more than twelve months. The auditor shall determine within the department compliance with purchase and bidding procedures prescribed by law.

5. Adopt, with the approval of the governor, rules necessary for the operation of the department.

6. Establish and administer accounts for federal, state or other monies made available to carry out the functions of the department.

7. As deemed necessary, appoint to peace officer status members of the Arizona national guard who have been awarded a United States army military occupational specialty as military policeman or a United States air force specialty code as security policeman. Prior to appointment as peace officers, such individuals must successfully complete a course of study to be prescribed by the Arizona peace officer standards and training board. Individuals appointed as peace officers pursuant to this section, when performing duties at facilities or on land operated or controlled by or under the jurisdiction of the adjutant general, ~~shall~~ have all the powers, privileges and immunities of peace officers provided by law. Individuals appointed as peace officers pursuant to 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.

8. Establish, abolish or reorganize the positions or organizational structure within the department, subject to legislative appropriation, if, in the adjutant general's judgment, the modification would make the operation of the department more efficient, effective or economical.

9. Establish an educational program for persons who have previously dropped out of high school and who are under twenty years of age but who are not adjudicated delinquent. The educational program shall be designated "project challenge", and the program shall be conducted by the national guard of Arizona in a paramilitary environment. The goal of the educational program is to provide persons enrolled in the program with the knowledge and

skills necessary to become productive citizens and to obtain a general equivalency diploma. In addition to monies appropriated for the program, the adjutant general may accept and spend monies from any other lawful public or private source. EACH EMPLOYEE OF THE PROGRAM WHO HAS CONTACT WITH A PROGRAM PARTICIPANT MUST HAVE A VALID FINGERPRINT CLEARANCE CARD ISSUED PURSUANT TO TITLE 41, CHAPTER 12, ARTICLE 3.1 OR PROVIDE TO THE DEPARTMENT DOCUMENTATION OF THE PERSON'S APPLICATION FOR A FINGERPRINT CLEARANCE CARD. THE EMPLOYEE MUST CERTIFY ON FORMS THAT ARE PROVIDED BY THE DEPARTMENT AND THAT ARE NOTARIZED WHETHER THE EMPLOYEE IS AWAITING TRIAL ON OR HAS EVER BEEN CONVICTED OF ANY OF THE CRIMINAL OFFENSES LISTED IN SECTION 41-1758.03, SUBSECTIONS B AND C IN THIS STATE OR SIMILAR OFFENSES IN ANOTHER STATE OR JURISDICTION. IF A PERSON WHO IS HIRED BY THE DEPARTMENT AS A PROJECT CHALLENGE WORKER DOES NOT HAVE A FINGERPRINT CLEARANCE CARD AT THE TIME OF EMPLOYMENT, THE PERSON MUST APPLY FOR A FINGERPRINT CLEARANCE CARD ON OR BEFORE THE SEVENTH DAY FOLLOWING THE DATE THE PERSON WAS HIRED.

10. Submit to the governor annually by October 1 a report for the department including the strength and condition of the national guard, the business transactions of the department, a detailed statement of expenditures for all military and civilian purposes and the disposition of all military and civilian property on hand or issued.

D. The adjutant general, with the approval of the governor, may:

1. Enter into contracts with individuals, this state, political subdivisions of this state or the federal government and its agencies for the purchase, acquisition, rental or lease of lands, buildings or military materiel and take title in the name of this state for the establishment and maintenance of armories, subject to legislative appropriation for these purposes.

2. Procure and contract for procurement of equipment and its issuance to members of the militia inducted into the service of this state.

3. Enter into agreements and plans with the state universities, community colleges or any educational institution supported by federal or state monies for promotion of the best interests of the national guard and military training of students of the institutions.

4. Lease property acquired under this chapter for any public purpose for a period of one year that is renewable.

5. Convey for any public purpose in the name of this state easements on real property acquired under this chapter.

6. Enter into contracts or agreements with the federal government that are deemed to be in the best interest of this state and the national guard.

7. Delegate the powers and duties in this section.

Sec. 2. Section 36-446.04, Arizona Revised Statutes, is amended to read:

36-446.04. Qualifications; period of validity; exemption

A. The board shall issue a license as a nursing care institution administrator pursuant to its rules to any person who meets the following qualifications:

1. Is of good character.

2. Has satisfactorily completed a course of instruction and training approved by the board that:

(a) Is designed and sufficiently administered to give the applicant knowledge of the proper needs to be served by nursing care institutions.

(b) Includes a thorough background in the laws and rules governing the operation of nursing care institutions and the protection of the interests of the patients in nursing care institutions.

(c) Includes thorough training in elements of good health care facilities administration.

3. Has passed an examination administered by the board designed to test for competency in the subject matter referred to in this subsection.

4. HAS MET ONE OF THE FOLLOWING FINGERPRINTING REQUIREMENTS:

(a) HAS A VALID FINGERPRINT CLEARANCE CARD ISSUED PURSUANT TO TITLE 41, CHAPTER 12, ARTICLE 3.1.

(b) HAS PROVIDED PROOF OF THE SUBMISSION OF AN APPLICATION FOR A FINGERPRINT CLEARANCE CARD. AN APPLICANT WHO HAS BEEN DENIED A FINGERPRINT CLEARANCE CARD MUST ALSO PROVIDE PROOF THAT THE APPLICANT QUALIFIES FOR A GOOD CAUSE EXCEPTION HEARING PURSUANT TO SECTION 41-619.55.

B. A PERSON WHO IS LICENSED PURSUANT TO THIS SECTION MUST MAINTAIN A VALID FINGERPRINT CLEARANCE CARD DURING THE VALID PERIOD OF THE PERSON'S LICENSE.

~~B.~~ C. The board shall issue a certificate as an assisted living facility manager pursuant to its rules to a person who meets the following qualifications:

1. Is of good character.

2. Has satisfactorily completed a course of instruction and training approved by the department.

3. Has passed an examination administered by the board.

4. Provides documentation satisfactory to the board that the applicant has completed two thousand eighty hours of paid work experience in a health related field within the preceding five years as prescribed by board rule.

5. HAS MET ONE OF THE FOLLOWING FINGERPRINTING REQUIREMENTS:

(a) HAS A VALID FINGERPRINT CLEARANCE CARD ISSUED PURSUANT TO TITLE 41, CHAPTER 12, ARTICLE 3.1.

(b) HAS PROVIDED PROOF OF THE SUBMISSION OF AN APPLICATION FOR A FINGERPRINT CLEARANCE CARD. AN APPLICANT WHO HAS BEEN DENIED A FINGERPRINT CLEARANCE CARD MUST ALSO PROVIDE PROOF THAT THE APPLICANT QUALIFIES FOR A GOOD CAUSE EXCEPTION HEARING PURSUANT TO SECTION 41-619.55.

D. A PERSON WHO IS CERTIFIED PURSUANT TO THIS SECTION MUST MAINTAIN A VALID FINGERPRINT CLEARANCE CARD DURING THE VALID PERIOD OF THE PERSON'S CERTIFICATE.

~~C.~~ E. In lieu of the requirements contained in subsection A, paragraph 2 or subsection ~~B~~ C, paragraph 2, an applicant may present satisfactory evidence to the board of sufficient education and training in the areas listed in that paragraph.

~~D.~~ F. A license is nontransferable and remains in effect until the following June 30 of an even numbered year at which time the license may be renewed if the licensee otherwise complies with this article and unless the license has been surrendered, suspended or revoked.

~~E.~~ G. A certificate is nontransferable and remains in effect until the following June 30 of an odd numbered year at which time the certificate may be renewed if the certificate holder otherwise complies with this article and the certificate has not been surrendered, suspended or revoked.

~~F.~~ H. This section does not apply to managers of adult foster care as defined in section 36-401.

Sec. 3. Section 41-619.51, Arizona Revised Statutes, is amended to read:

41-619.51. Definitions

In this article, unless the context otherwise requires:

1. "Agency" means the supreme court, the department of economic security, the department of education, the department of health services, ~~or~~ the department of juvenile corrections, THE DEPARTMENT OF EMERGENCY AND MILITARY AFFAIRS OR THE BOARD OF EXAMINERS OF NURSING CARE INSTITUTION ADMINISTRATORS AND ASSISTED LIVING FACILITY MANAGERS.

2. "Board" means the board of fingerprinting.

3. "Expedited review" means an examination, in accordance with board rule, of the documents an applicant submits by the board or its hearing officer without the applicant being present.

4. "Facility" or "program" means state facilities or programs that provide direct services to adults with developmental disabilities or to juveniles.

5. "Good cause exception" means the issuance of a fingerprint clearance card to an employee pursuant to section 41-619.55.

6. "Person" means a person who is required to be fingerprinted pursuant to any of the following:

(a) Section 8-105.

(b) Section 8-322.

(c) Section 8-509.

(d) Section 8-802.

(e) Section 15-183.

(f) Section 15-534.

(g) Section 15-1330.

(h) SECTION 26-102.

~~(h)~~ (i) Section 36-411.

~~(i)~~ (j) Section 36-425.03.
(k) SECTION 36-446.04
~~(j)~~ (l) Section 36-594.01.
~~(k)~~ (m) Section 36-594.02.
~~(l)~~ (n) Section 36-882.
~~(m)~~ (o) Section 36-883.02.
~~(n)~~ (p) Section 36-897.01.
~~(o)~~ (q) Section 36-897.03.
~~(p)~~ (r) Section 36-3008.
~~(q)~~ (s) Section 41-1964.
~~(r)~~ (t) Section 41-1967.01.
~~(s)~~ (u) Section 41-1968.
~~(t)~~ (v) Section 41-1969.
~~(u)~~ (w) Section 41-2814.
~~(v)~~ (x) Section 46-141, subsection A.
~~(w)~~ (y) Section 46-321.

Sec. 4. Section 41-1758, Arizona Revised Statutes, is amended to read:

41-1758. Definitions

In this article, unless the context otherwise requires:

1. "Agency" means the supreme court, the department of economic security, the department of education, the department of health services, ~~or~~ the department of juvenile corrections, THE DEPARTMENT OF EMERGENCY AND MILITARY AFFAIRS OR THE BOARD OF EXAMINERS OF NURSING CARE INSTITUTION ADMINISTRATORS AND ASSISTED LIVING FACILITY MANAGERS.

2. "Division" means the fingerprinting division in the department of public safety.

3. "Facility" or "program" means state facilities or programs that provide direct services to adults with developmental disabilities or to juveniles.

4. "Good cause exception" means the issuance of a fingerprint clearance card to an employee pursuant to section 41-619.55.

5. "Person" means a person who is required to be fingerprinted pursuant to any of the following:

(a) Section 8-105.
(b) Section 8-322.
(c) Section 8-509.
(d) Section 8-802.
(e) Section 15-183.
(f) Section 15-534.
(g) Section 15-1330.
(h) SECTION 26-102.
~~(h)~~ (i) Section 36-411.
~~(i)~~ (j) Section 36-425.03.
(k) SECTION 36-446.04.
~~(j)~~ (l) Section 36-594.01.
~~(k)~~ (m) Section 36-594.02.

~~(l)~~ (n) Section 36-882.
~~(m)~~ (o) Section 36-883.02.
~~(n)~~ (p) Section 36-897.01.
~~(o)~~ (q) Section 36-897.03.
~~(p)~~ (r) Section 36-3008.
~~(q)~~ (s) Section 41-1964.
~~(r)~~ (t) Section 41-1967.01.
~~(s)~~ (u) Section 41-1968.
~~(t)~~ (v) Section 41-1969.
~~(u)~~ (w) Section 41-2814.
~~(v)~~ (x) Section 46-141, subsection A.
~~(w)~~ (y) Section 46-321.

6. "Vulnerable adult" has the same meaning prescribed in section 13-3623.

Sec. 5. Section 41-1758.01, Arizona Revised Statutes, is amended to read:

41-1758.01. Fingerprinting division; duties

The fingerprinting division is established in the department of public safety and shall:

1. Conduct fingerprint background checks for persons and applicants who are seeking employment with licensees, contract providers and state agencies that require fingerprint background checks pursuant to sections 8-105, 8-322, 8-509, 8-802, 15-183, 15-534, 15-1330, 26-102, 36-411, 36-425.03, 36-446.04, 36-594.01, 36-594.02, 36-882, 36-883.02, 36-897.01, 36-897.03, 36-3008, 41-1964, 41-1967.01, 41-1968, 41-1969 and 41-2814, section 46-141, subsection A and section 46-321.

2. Issue fingerprint clearance cards. On issuance, a fingerprint clearance card becomes the personal property of the cardholder and the cardholder shall retain possession of the fingerprint clearance card.

3. On submission of an application for a fingerprint clearance card, collect the fees established by the board of fingerprinting pursuant to section 41-619.53 and deposit, pursuant to sections 35-146 and 35-147, the monies collected in the board of fingerprinting fund.

4. Inform in writing each person who submits fingerprints for a fingerprint background check of the person's right to petition the board of fingerprinting for a good cause exception pursuant to section 41-1758.03.

5. Administer and enforce this article.

Sec. 6. Project challenge workers; fingerprint clearance cards; current workers

Notwithstanding section 26-102, subsection C, paragraph 9, Arizona Revised Statutes, as amended by this act, the department of emergency and military affairs may continue to employ a project challenge worker who was hired before the effective date of this act and who does not have a fingerprint clearance card if the employee submits an application for a fingerprint clearance card within sixty days after the effective date of this act and the application is not denied.

APPROVED BY THE GOVERNOR MAY 8, 2007.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 9, 2007.

Passed the House April 23, 2007,

by the following vote: 55 Ayes,

0 Nays, 5 Not Voting

Speaker of the House

Pro Tempore

Norman L. Moore

Chief Clerk of the House

Passed the Senate February 8, 2007,

by the following vote: 28 Ayes,

0 Nays, 2 Not Voting

Timothy S. Bee

President of the Senate

Chauncia Billington

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

_____

Secretary to the Governor

Approved this _____ day of

_____, 20_____,

at _____ o'clock _____ M.

_____

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

_____

Secretary of State

**S.B. 1316**

**SENATE CONCURS IN HOUSE AMENDMENTS AND FINAL PASSAGE**

Passed the Senate May 2, 2007

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

Timothy S. Bee
President of the Senate

Charmin Billington
Secretary of the Senate

**EXECUTIVE DEPARTMENT OF ARIZONA**
**OFFICE OF GOVERNOR**

This Bill received by the Governor this

2nd day of May, 2007

at 11:05 o'clock a. M.

Jennifer Ybarra
Secretary to the Governor

Approved this 8 day of

May 2007

at 4:50 o'clock P. M.

[signature]
Governor of Arizona

**EXECUTIVE DEPARTMENT OF ARIZONA**
**OFFICE OF SECRETARY OF STATE**

This Bill received by the Secretary of State

this 9 day of May, 2007

S.B. 1316

at 8:35 o'clock A. M.

Janice K. Brewer
Secretary of State