Conference Engrossed

FILED

JANICE K. BREWER
SECRETARY OF STATE

State of Arizona
House of Representatives
Forty-eighth Legislature
First Regular Session
2007

CHAPTER 205

HOUSE BILL 2021

AN ACT

AMENDING TITLE 15, CHAPTER 14, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 8; AMENDING SECTIONS 41-619.51, 41-619.55, 41-1758, 41-1758.01 AND 41-1758.03, ARIZONA REVISED STATUTES; RELATING TO FINGERPRINTING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Title 15, chapter 14, Arizona Revised Statutes, is amended by adding article 8, to read:

ARTICLE 8. FINGERPRINTING OF STUDENTS

15-1881. Postsecondary health sciences programs; definitions

A. A PROGRAM IN A PUBLIC OR PRIVATE POSTSECONDARY INSTITUTION THAT REQUIRES CLINICAL TRAINING IN HOSPITALS OR OTHER HEALTH CARE FACILITIES AS PART OF ITS EDUCATIONAL PROGRAM MAY REQUIRE AS A CONDITION OF ACCEPTANCE AS A HEALTH SCIENCES STUDENT OR AS A CONDITION OF EMPLOYMENT AS A CLINICAL ASSISTANT THE PERSON TO OBTAIN A VALID FINGERPRINT CLEARANCE CARD ISSUED PURSUANT TO TITLE 41, CHAPTER 12, ARTICLE 3.1 OR MAY REQUIRE THAT THE CARD BE OBTAINED BEFORE PLACEMENT IN CLINICAL TRAINING ROTATIONS. THE PROGRAM MAY RESCIND THE ADMISSION, REMOVE THE PERSON FROM THE EDUCATIONAL OR TRAINING PROGRAM OR TERMINATE THE EMPLOYMENT OF ANY PERSON WHO FAILS TO OBTAIN A VALID FINGERPRINT CLEARANCE CARD.

B. A PERSON WHO IS REQUIRED TO POSSESS A FINGERPRINT CLEARANCE CARD PURSUANT TO SUBSECTION A OF THIS SECTION AND WHO DOES NOT POSSESS A FINGERPRINT CLEARANCE CARD BEFORE ENROLLMENT OR EMPLOYMENT AT THE PUBLIC OR PRIVATE POSTSECONDARY INSTITUTION SHALL VERIFY TO THE PUBLIC OR PRIVATE POSTSECONDARY INSTITUTION, BY COMPLETING A SIGNED NOTARIZED FORM PROVIDED BY THE PUBLIC OR PRIVATE POSTSECONDARY INSTITUTION, THAT THE PERSON IS NOT AWAITING TRIAL ON OR HAS NEVER BEEN CONVICTED OF OR ADMITTED IN OPEN COURT PURSUANT TO A PLEA AGREEMENT TO COMMITTING ANY OFFENSE LISTED IN SECTION 41-1758.03, SUBSECTION B OR C IN THIS STATE OR A SIMILAR OFFENSE COMMITTED IN ANOTHER STATE OR JURISDICTION, PENDING RECEIPT OF THE FINGERPRINT CLEARANCE CARD.

C. INFORMATION CONTAINED IN A FORM SUBMITTED PURSUANT TO SUBSECTION B OF THIS SECTION IS CONFIDENTIAL.

D. A PERSON WHO IS REQUIRED TO OBTAIN A FINGERPRINT CLEARANCE CARD PURSUANT TO THIS SECTION MAY BE CHARGED ALL COSTS AND FEES ASSOCIATED WITH OBTAINING OR RENEWING THE CARD AS PRESCRIBED BY SECTIONS 41-619.53 AND 41-1750.

E. FOR THE PURPOSES OF THIS SECTION:

1. "CLINICAL ASSISTANT" MEANS A PARTICIPANT IN A GRADUATE MEDICAL OR PHARMACY EDUCATION PROGRAM AT A PUBLIC OR PRIVATE POSTSECONDARY INSTITUTION.

2. "HEALTH SCIENCES STUDENT" MEANS A PERSON WHO HAS APPLIED TO OR IS ENROLLED IN A PUBLIC OR PRIVATE POSTSECONDARY INSTITUTION PROGRAM OF STUDY IN MEDICINE, NURSING, PHARMACY, PHYSICAL THERAPY, ATHLETIC TRAINING, DENTAL HYGIENE, COMMUNICATION SCIENCES AND DISORDERS, SPEECH AND HEARING SCIENCES OR GENERAL HEALTH SCIENCES.

Sec. 2. 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.

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

~~6.~~ 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 15-1881.
~~(h)~~ (i) Section 36-411.
~~(i)~~ (j) Section 36-425.03.
~~(j)~~ (k) Section 36-594.01.
~~(k)~~ (l) Section 36-594.02.
~~(l)~~ (m) Section 36-882.
~~(m)~~ (n) Section 36-883.02.
~~(n)~~ (o) Section 36-897.01.
~~(o)~~ (p) Section 36-897.03.
~~(p)~~ (q) Section 36-3008.
~~(q)~~ (r) Section 41-1964.
~~(r)~~ (s) Section 41-1967.01.
~~(s)~~ (t) Section 41-1968.
~~(t)~~ (u) Section 41-1969.
~~(u)~~ (v) Section 41-2814.
~~(v)~~ (w) Section 46-141, subsection A.
~~(w)~~ (x) Section 46-321.

Sec. 3. Section 41-619.55, Arizona Revised Statutes, is amended to read:

41-619.55. Good cause exceptions; expedited review; hearing; revocation

A. The board or its hearing officer shall determine good cause exceptions. THE BOARD OR ITS HEARING OFFICER SHALL DETERMINE A GOOD CAUSE EXCEPTION AFTER AN EXPEDITED REVIEW OR AFTER A GOOD CAUSE EXCEPTION HEARING.

THE BOARD OR ITS HEARING OFFICER SHALL CONDUCT AN EXPEDITED REVIEW WITHIN TWENTY DAYS AFTER RECEIVING AN APPLICATION FOR A GOOD CAUSE EXCEPTION.

B. WITHIN FORTY-FIVE DAYS AFTER CONDUCTING AN EXPEDITED REVIEW, the board or its hearing officer shall hold a good cause exception hearing if the board or its hearing officer determines that the applicant does not qualify for a good cause exception under an expedited review but is qualified to apply for a good cause exception and the applicant submits an application for A good cause EXCEPTION within the time limits prescribed by rule.

C. When determining whether a person is eligible to receive a good cause exception under an expedited review, the board or its hearing officer shall consider whether the person has shown to the board's or its hearing officer's satisfaction that the person is not awaiting trial on or has not been convicted of committing any of the offenses listed in section 41-1758.03, subsection B or that the person is successfully rehabilitated and is not a recidivist. Before granting a good cause exception under an expedited review, the board or its hearing officer shall consider all of the criteria listed in subsection E of this section.

D. The following persons shall be present during good cause exception hearings:

1. The board or its hearing officer.

2. The person who requested the good cause exception hearing. The person may be accompanied by a representative at the hearing.

E. The board or its hearing officer may grant a good cause exception at a hearing if the person shows to the board's or its hearing officer's satisfaction that the person is not awaiting trial on or has not been convicted of committing any of the offenses listed in section 41-1758.03, subsection B or that the person is successfully rehabilitated and is not a recidivist. THE BOARD OR ITS HEARING OFFICER SHALL GRANT OR DENY A GOOD CAUSE EXCEPTION WITHIN EIGHTY DAYS AFTER THE GOOD CAUSE EXCEPTION HEARING. Before granting a good cause exception at a hearing the board or its hearing officer shall consider all of the following in accordance with board rule:

1. The extent of the person's criminal record.

2. The length of time that has elapsed since the offense was committed.

3. The nature of the offense.

4. Any applicable mitigating circumstances.

5. The degree to which the person participated in the offense.

6. The extent of the person's rehabilitation, including:

(a) Completion of probation, parole or community supervision.

(b) Whether the person paid restitution or other compensation for the offense.

(c) Evidence of positive action to change criminal behavior, such as completion of a drug treatment program or counseling.

(d) Personal references attesting to the person's rehabilitation.

F. If the board or its hearing officer grants a good cause exception to a person, the board shall request in writing that the department of public safety issue a fingerprint clearance card to the person.

G. The board's staff, under the direction of the executive director of the board, shall review reports it receives of the arrest, charging or conviction of a person for offenses listed in section 41-1758.03 who previously received a fingerprint clearance card. EXCEPT AS PROVIDED BY SUBSECTION J OF THIS SECTION, the executive director shall report any arrest, charge or conviction of a prohibited crime to the state agencies listed on the applicant's fingerprint clearance card application.

H. The board may request in writing that the department of public safety revoke a person's fingerprint clearance card pursuant to section 41-1758.04 if the person received a fingerprint clearance card and the person is subsequently convicted of an offense listed in section 41-1758.03, subsection B or C.

I. Pending the outcome of a good cause exception determination, the board or its hearing officer may issue interim approval in accordance with board rule to continue working to a good cause exception applicant.

J. IF THE BOARD'S STAFF, UNDER THE DIRECTION OF THE EXECUTIVE DIRECTOR, RECEIVES A REPORT OF AN ARREST, CHARGING OR CONVICTION OF A PROHIBITED CRIME FOR A PERSON WHO PREVIOUSLY RECEIVED A FINGERPRINT CLEARANCE CARD PURSUANT TO SECTION 15-1881, THE EXECUTIVE DIRECTOR SHALL NOT REPORT THIS INFORMATION TO THE STATE AGENCY THAT IS LISTED ON THE APPLICANT'S FINGERPRINT CLEARANCE CARD APPLICATION BUT SHALL NOTIFY THE PERSON ISSUED THE FINGERPRINT CLEARANCE CARD OF THE REPORT.

~~J.~~ K. The board is exempt from title 41, chapter 6, article 10.

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.

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.~~ 3. "Good cause exception" means the issuance of a fingerprint clearance card to an employee pursuant to section 41-619.55.

~~5.~~ 4. "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 15-1881.
~~(h)~~ (i) Section 36-411.
~~(i)~~ (j) Section 36-425.03.
~~(j)~~ (k) Section 36-594.01.
~~(k)~~ (l) Section 36-594.02.
~~(l)~~ (m) Section 36-882.
~~(m)~~ (n) Section 36-883.02.
~~(n)~~ (o) Section 36-897.01.
~~(o)~~ (p) Section 36-897.03.
~~(p)~~ (q) Section 36-3008.
~~(q)~~ (r) Section 41-1964.
~~(r)~~ (s) Section 41-1967.01.
~~(s)~~ (t) Section 41-1968.
~~(t)~~ (u) Section 41-1969.
~~(u)~~ (v) Section 41-2814.
~~(v)~~ (w) Section 46-141, subsection A.
~~(w)~~ (x) Section 46-321.

~~6.~~ 5. "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 OR SEEKING EMPLOYMENT OR EDUCATIONAL OPPORTUNITIES WITH AGENCIES that require fingerprint background checks pursuant to sections 8-105, 8-322, 8-509, 8-802, 15-183, 15-534, 15-1330, 15-1881,36-411, 36-425.03, 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. Section 41-1758.03, Arizona Revised Statutes, is amended to read:

41-1758.03. Fingerprint clearance cards; issuance; immunity

A. On receiving the state and federal criminal history record of a person, the division shall compare the record with the list of criminal offenses that preclude the person from receiving a fingerprint clearance card. If the person's criminal history record does not contain any of the offenses listed in subsections B and C of this section, the division shall issue the person a fingerprint clearance card.

B. A person who is subject to registration as a sex offender in this state or any other jurisdiction or who is awaiting trial on or who has been convicted of committing or attempting or conspiring to commit one or more of the following offenses in this state or the same or similar offenses in another state or jurisdiction is precluded from receiving a fingerprint clearance card:

1. Sexual abuse of a minor.
2. Sexual abuse of a vulnerable adult.
3. Incest.
4. First or second degree murder.
5. Sexual assault.
6. Sexual exploitation of a minor.
7. Sexual exploitation of a vulnerable adult.
8. Commercial sexual exploitation of a minor.
9. Commercial sexual exploitation of a vulnerable adult.
10. Child prostitution as prescribed in section 13-3212.
11. Child abuse.
12. Abuse of a vulnerable adult.
13. Sexual conduct with a minor.
14. Molestation of a child.
15. Molestation of a vulnerable adult.
16. A dangerous crime against children as defined in section 13-604.01.
17. Exploitation of minors involving drug offenses.
18. Taking a child for the purposes of prostitution as prescribed in section 13-3206.
19. Neglect or abuse of a vulnerable adult.

C. A person who is awaiting trial on or who has been convicted of committing or attempting or conspiring to commit one or more of the following offenses in this state or the same or similar offenses in another state or jurisdiction is precluded from receiving a fingerprint clearance card, except that the person may petition the board of fingerprinting for a good cause exception pursuant to section 41-619.55:

1. Manslaughter.
2. Endangerment.
3. Threatening or intimidating.

4. Assault.
5. Unlawfully administering intoxicating liquors, narcotic drugs or dangerous drugs.
6. Assault by vicious animals.
7. Drive by shooting.
8. Assaults on officers or fire fighters.
9. Discharging a firearm at a structure.
10. Indecent exposure.
11. Public sexual indecency.
12. Aggravated criminal damage.
13. Theft.
14. Theft by extortion.
15. Shoplifting.
16. Forgery.
17. Criminal possession of a forgery device.
18. Obtaining a signature by deception.
19. Criminal impersonation.
20. Theft of a credit card or obtaining a credit card by fraudulent means.
21. Receipt of anything of value obtained by fraudulent use of a credit card.
22. Forgery of a credit card.
23. Fraudulent use of a credit card.
24. Possession of any machinery, plate or other contrivance or incomplete credit card.
25. False statement as to financial condition or identity to obtain a credit card.
26. Fraud by persons authorized to provide goods or services.
27. Credit card transaction record theft.
28. Misconduct involving weapons.
29. Misconduct involving explosives.
30. Depositing explosives.
31. Misconduct involving simulated explosive devices.
32. Concealed weapon violation.
33. Enticement of any persons for purposes of prostitution.
34. Procurement by false pretenses of any person for purposes of prostitution.
35. Procuring or placing persons in a house of prostitution.
36. Receiving earnings of a prostitute.
37. Causing one's spouse to become a prostitute.
38. Detention of persons in a house of prostitution for debt.
39. Keeping or residing in a house of prostitution or employment in prostitution.
40. Pandering.

41. Transporting persons for the purpose of prostitution or other immoral purposes.
42. Possession and sale of peyote.
43. Possession and sale of a vapor-releasing substance containing a toxic substance.
44. Sale of precursor chemicals.
45. Possession, use or sale of marijuana, dangerous drugs or narcotic drugs.
46. Manufacture or distribution of an imitation controlled substance.
47. Manufacture or distribution of an imitation prescription-only drug.
48. Manufacture or distribution of an imitation over-the-counter drug.
49. Possession or possession with intent to use an imitation controlled substance.
50. Possession or possession with intent to use an imitation prescription-only drug.
51. Possession or possession with intent to use an imitation over-the-counter drug.
52. Manufacture of certain substances and drugs by certain means.
53. Adding poison or other harmful substance to food, drink or medicine.
54. A criminal offense involving criminal trespass and burglary under title 13, chapter 15.
55. A criminal offense involving organized crime and fraud under title 13, chapter 23.
56. Child neglect.
57. Misdemeanor offenses involving contributing to the delinquency of a minor.
58. Offenses involving domestic violence.
59. Arson.
60. Kidnapping.
61. Felony offenses involving sale, distribution or transportation of, offer to sell, transport or distribute or conspiracy to sell, transport or distribute marijuana, dangerous drugs or narcotic drugs.
62. Robbery.
63. Aggravated assault.
64. Felony offenses involving contributing to the delinquency of a minor.

D. A person who is awaiting trial on or who has been convicted of committing or attempting or conspiring to commit a violation of section 28-1381, 28-1382 or 28-1383 in this state or the same or similar offense in another state or jurisdiction within five years from the date of applying for a fingerprint clearance card is precluded from driving any vehicle to transport employees or clients of the employing agency as part of the person's employment. The division shall place a notation on the fingerprint clearance card that indicates this driving restriction. This subsection does

not preclude a person from driving a vehicle alone as part of the person's employment.

E. Notwithstanding subsection C of this section, on receiving written notice from the board of fingerprinting that a good cause exception was granted pursuant to section 41-619.55, the division shall issue a fingerprint clearance card to the person.

F. If the division denies a person's application for a fingerprint clearance card pursuant to subsection C of this section and a good cause exception is requested pursuant to section 41-619.55, the division shall release, on request by the board of fingerprinting, the person's criminal history record to the board of fingerprinting.

G. A person shall be granted a fingerprint clearance card if either of the following applies:

1. An agency granted a good cause exception before August 16, 1999 and no new precluding offense is identified. The fingerprint clearance card shall specify only the program that granted the good cause exception. On the request of the applicant, the agency that granted the prior good cause exception shall notify the division in writing of the date on which the prior good cause exception was granted and the date of the conviction and the name of the offense for which the good cause exception was granted.

2. The board granted a good cause exception and no new precluding offense is identified. The fingerprint clearance card shall specify the programs for which the board granted the good cause exception.

H. The licensee or contract provider shall assume the costs of fingerprint checks and may charge these costs to persons required to be fingerprinted.

I. A person who is under eighteen years of age or who is at least ninety-nine years of age is exempt from the fingerprint clearance card requirements of this section. At all times the person shall be under the direct visual supervision of personnel who have valid fingerprint clearance cards.

J. The division may conduct periodic state criminal history records checks for the purpose of updating the clearance status of current fingerprint clearance card holders and may notify the board of fingerprinting and the agency employing the person of the results of the records check.

K. The division shall revoke a person's fingerprint clearance card on receipt of a written request for revocation from the board of fingerprinting pursuant to section 41-619.55.

L. The division shall not issue a fingerprint clearance card to a person if the division cannot determine, within thirty business days after receipt of the person's state and federal criminal history record information, whether the person is awaiting trial on or has been convicted of committing any of the offenses listed in subsection B or C of this section. If the division is unable to make the determination required by this section

and does not issue a fingerprint clearance card to a person, the person may request a good cause exception pursuant to section 41-619.55.

M. EXCEPT AS PROVIDED IN SUBSECTION N OF THIS SECTION, if after conducting a state and federal criminal history record check the division determines that it is not authorized to issue a fingerprint clearance card to a person, the division shall notify the agency that licenses or employs the person that the division is not authorized to issue a fingerprint clearance card. This notice shall include the criminal history information on which the denial was based. This criminal history information is subject to dissemination restrictions pursuant to section 41-1750 and Public Law 92-544.

N. IF, AFTER CONDUCTING A STATE AND FEDERAL CRIMINAL HISTORY RECORD CHECK ON A PERSON WHO REQUESTS A FINGERPRINT CLEARANCE CARD PURSUANT TO SECTION 15-1881, THE DIVISION DETERMINES THAT IT IS NOT AUTHORIZED TO ISSUE A FINGERPRINT CLEARANCE CARD TO THE PERSON, THE DIVISION SHALL NOT NOTIFY THE AGENCY. THE DIVISION SHALL NOTIFY THE PERSON WHO REQUESTED THE CARD THAT THE DIVISION IS NOT AUTHORIZED TO ISSUE A FINGERPRINT CLEARANCE CARD.

~~N.~~ O. The division is not liable for damages resulting from:

1. The issuance of a fingerprint clearance card to a person who is later found to have been ineligible to receive a fingerprint clearance card at the time the card was issued.

2. The denial of a fingerprint clearance card to a person who is later found to have been eligible to receive a fingerprint clearance card at the time issuance of the card was denied.

~~O.~~ P. The issuance of a fingerprint clearance card does not entitle a person to employment.

APPROVED BY THE GOVERNOR MAY 14, 2007.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 14, 2007.

Passed the House February 14, 20 07

by the following vote: 58 Ayes,

0 Nays, 2 Not Voting

Speaker of the House

Pro Tempore

Herman L. Moore

Chief Clerk of the House

Passed the Senate April 18, 20 07

by the following vote: 25 Ayes,

0 Nays, 5 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

_____ day of _____, 20_____

at _____ o'clock _____M.

_____

Secretary to the Governor

Approved this _____day of

_____

at _____o'clock _____M.

_____

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this _____ day of _____, 20_____

at _____ o'clock _____M.

_____

Secretary of State

H.B. 2021

HOUSE FINAL PASSAGE
as per Joint Conference

Passed the House May 3, 20 07

by the following vote: 56 Ayes,

0 Nays, 4 Not Voting

Speaker of the House

Chief Clerk of the House

SENATE FINAL PASSAGE
as per Joint Conference

Passed the Senate May 8, 20 07

by the following vote: 26 Ayes,

1 Nays, 3 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

9th day of May, 20 07

at 11:13 o'clock a. M.

Secretary to the Governor

Approved this 14 day of

May 2007

at 9:55 o'clock A. M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 14 day of May, 20 07

at 11:25 o'clock A. M.

Secretary of State

H.B. 2021