House Engrossed Senate Bill

FILED

JANICE K. BREWER
SECRETARY OF STATE

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

CHAPTER 95

SENATE BILL 1045

AN ACT

AMENDING SECTIONS 41-619.53 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. Section 41-619.53, Arizona Revised Statutes, is amended to read:

41-619.53. Board of fingerprinting; powers and duties; personnel; liability

A. The board of fingerprinting shall:

1. Determine good cause exceptions pursuant to section 41-619.55. The board ~~shall~~ MAY appoint a hearing officer to determine good cause exceptions.

2. Adopt rules to implement this article, including rules to establish good cause exceptions for the issuance of fingerprint clearance cards pursuant to section 41-1758.03. This rule making is exempt from the requirements of chapter 6 of this title.

3. Administer and enforce this article and rules adopted pursuant to this article.

4. Furnish a copy of its rules, on request, to all applicants who petition the board for a good cause exception pursuant to section 41-1758.03 and, on request, to licensees, contract providers and state agencies.

5. Establish fees.

B. If the board or its hearing officer grants a good cause exception, the board shall request in writing that the department of public safety issue a card to the applicant. If the board grants a good cause exception, the board's decision must be unanimous.

C. The board may employ clerical, professional and technical personnel subject to fee monies that are collected and to the budget that is approved by the board members and shall prescribe personnel duties and determine personnel compensation.

D. Members and employees of the board are not liable for acts done or actions taken by any board member or employee if the members or employees act in good faith following the requirements of this article.

Sec. 2. 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, SOLICITING, FACILITATING 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.~~ 1. Sexual abuse of a vulnerable adult.
~~3.~~ 2. Incest.
~~4.~~ 3. First or second degree murder.
~~5.~~ 4. Sexual assault.
~~6.~~ 5. Sexual exploitation of a minor.
~~7.~~ 6. Sexual exploitation of a vulnerable adult.
~~8.~~ 7. Commercial sexual exploitation of a minor.
~~9.~~ 8. Commercial sexual exploitation of a vulnerable adult.
~~10.~~ 9. Child prostitution as prescribed in section 13-3212.
~~11.~~ 10. Child abuse.
~~12.~~ 11. Abuse of a vulnerable adult.
~~13.~~ 12. Sexual conduct with a minor.
~~14.~~ 13. Molestation of a child.
~~15.~~ 14. Molestation of a vulnerable adult.
~~16.~~ 15. A dangerous crime against children as defined in section 13-604.01.
~~17.~~ 16. Exploitation of minors involving drug offenses.
~~18.~~ 17. Taking a child for the purposes of prostitution as prescribed in section 13-3206.
~~19.~~ 18. Neglect or abuse of a vulnerable adult.
19. SEX TRAFFICKING.
20. SEXUAL ABUSE.
21. PRODUCTION, PUBLICATION, SALE, POSSESSION AND PRESENTATION OF OBSCENE ITEMS AS PRESCRIBED IN SECTION 13-3502.
22. FURNISHING HARMFUL ITEMS TO MINORS AS PRESCRIBED IN SECTION 13-3506.
23. FURNISHING HARMFUL ITEMS TO MINORS BY INTERNET ACTIVITY AS PRESCRIBED IN SECTION 13-3506.01.
24. OBSCENE OR INDECENT TELEPHONE COMMUNICATIONS TO MINORS FOR COMMERCIAL PURPOSES AS PRESCRIBED IN SECTION 13-3512.
25. LURING A MINOR FOR SEXUAL EXPLOITATION.
26. ENTICEMENT OF PERSONS FOR PURPOSES OF PROSTITUTION.
27. PROCUREMENT BY FALSE PRETENSES OF PERSON FOR PURPOSES OF PROSTITUTION.
28. PROCURING OR PLACING PERSONS IN A HOUSE OF PROSTITUTION.
29. RECEIVING EARNINGS OF A PROSTITUTE.
30. CAUSING ONE'S SPOUSE TO BECOME A PROSTITUTE.
31. DETENTION OF PERSONS IN A HOUSE OF PROSTITUTION FOR DEBT.
32. KEEPING OR RESIDING IN A HOUSE OF PROSTITUTION OR EMPLOYMENT IN PROSTITUTION.
33. PANDERING.
34. TRANSPORTING PERSONS FOR THE PURPOSE OF PROSTITUTION, POLYGAMY AND CONCUBINAGE.
35. PORTRAYING ADULT AS A MINOR AS PRESCRIBED IN SECTION 13-3555.

36. ADMITTING MINORS TO PUBLIC DISPLAYS OF SEXUAL CONDUCT AS PRESCRIBED IN SECTION 13-3558.

C. A person who is awaiting trial on or who has been convicted of committing or attempting, SOLICITING, FACILITATING 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.~~ 33. Possession and sale of peyote.

~~43.~~ 34. Possession and sale of a vapor-releasing substance containing a toxic substance.

~~44.~~ 35. Sale of precursor chemicals.

~~45.~~ 36. Possession, use or sale of marijuana, dangerous drugs or narcotic drugs.

~~46.~~ 37. Manufacture or distribution of an imitation controlled substance.

~~47.~~ 38. Manufacture or distribution of an imitation prescription-only drug.

~~48.~~ 39. Manufacture or distribution of an imitation over-the-counter drug.

~~49.~~ 40. Possession or possession with intent to use an imitation controlled substance.

~~50.~~ 41. Possession or possession with intent to use an imitation prescription-only drug.

~~51.~~ 42. Possession or possession with intent to use an imitation over-the-counter drug.

~~52.~~ 43. Manufacture of certain substances and drugs by certain means.

~~53.~~ 44. Adding poison or other harmful substance to food, drink or medicine.

~~54.~~ 45. A criminal offense involving criminal trespass and burglary under title 13, chapter 15.

~~55.~~ 46. A criminal offense ~~involving organized crime and fraud~~ under title 13, chapter 23.

~~56.~~ 47. Child neglect.

~~57.~~ 48. Misdemeanor offenses involving contributing to the delinquency of a minor.

~~58.~~ 49. Offenses involving domestic violence.

~~59.~~ 50. Arson.

~~60.~~ 51. Kidnapping.

~~61.~~ 52. 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.~~ 53. Robbery.

~~63.~~ 54. Aggravated assault.

~~64.~~ 55. Felony offenses involving contributing to the delinquency of a minor.

56. NEGLIGENT HOMICIDE.

57. CRIMINAL DAMAGE.

58. MISAPPROPRIATION OF CHARTER SCHOOL MONIES AS PRESCRIBED IN SECTION 13-1818.

59. TAKING IDENTITY OF ANOTHER PERSON OR ENTITY.

60. AGGRAVATED TAKING IDENTITY OF ANOTHER PERSON OR ENTITY.

61. TRAFFICKING IN THE IDENTITY OF ANOTHER PERSON OR ENTITY.

62. CRUELTY TO ANIMALS.

63. PROSTITUTION.

64. SALE OR DISTRIBUTION OF MATERIAL HARMFUL TO MINORS THROUGH VENDING MACHINES AS PRESCRIBED IN SECTION 13-3513.

65. WELFARE FRAUD.

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

APPROVED BY THE GOVERNOR APRIL 18, 2007.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 18, 2007.

Passed the House April 2, 20 07,

by the following vote: 54 Ayes,

1 Nays, 5 Not Voting

Speaker of the House

Chief Clerk of the House

Passed the Senate February 1, 20 07,

by the following vote: 28 Ayes,

0 Nays, 2 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

_____ 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. 1045

SENATE CONCURS IN HOUSE AMENDMENTS AND FINAL PASSAGE

Passed the Senate April 12, **20** 07

by the following vote: 27 **Ayes,**

0 **Nays,** 3 **Not Voting**

Timothy S. Bee
President of the Senate

Shannon Bilbrey
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

12th **day of** April, **20** 07

at 11:41 **o'clock** a **M.**

Jennifer Ybarra
Secretary to the Governor

Approved this 18 **day of**

April

at 2:15 **o'clock** P. **M.**

Jan Brewer
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 18 **day of** April, **20** 07

S.B. 1045

at 3:33 **o'clock** P. **M.**

Janice K. Brewer
Secretary of State