House Engrossed Senate Bill

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CHAPTER 125

SENATE BILL 1391

AN ACT

AMENDING SECTIONS 15-183, 15-512 AND 23-1361, ARIZONA REVISED STATUTES; RELATING TO SCHOOL PERSONNEL.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 15-183, Arizona Revised Statutes, is amended to read:

15-183. Charter schools; application; requirements; immunity; exemptions; renewal of application; reprisal; fee; funds

A. An applicant seeking to establish a charter school shall submit a written application to a proposed sponsor as prescribed in subsection C of this section. The application, application process and application time frames shall be posted on the sponsor's website and shall include the following, as specified in the application adopted by the sponsor:

1. A detailed educational plan.

2. A detailed business plan.

3. A detailed operational plan.

4. Any other materials required by the sponsor.

B. The sponsor of a charter school may contract with a public body, private person or private organization for the purpose of establishing a charter school pursuant to this article.

C. The sponsor of a charter school may be either a school district governing board, the state board of education, the state board for charter schools, a university under the jurisdiction of the Arizona board of regents, a community college district with enrollment of more than fifteen thousand full-time equivalent students or a group of community college districts with a combined enrollment of more than fifteen thousand full-time equivalent students, subject to the following requirements:

1. For charter schools that submit an application for sponsorship to a school district governing board:

(a) An applicant for a charter school may submit its application to a school district governing board, which shall either accept or reject sponsorship of the charter school within ninety days. An applicant may submit a revised application for reconsideration by the governing board. If the governing board rejects the application, the governing board shall notify the applicant in writing of the reasons for the rejection. The applicant may request, and the governing board may provide, technical assistance to improve the application.

(b) In the first year that a school district is determined to be out of compliance with the uniform system of financial records, within fifteen days of the determination of noncompliance, the school district shall notify by certified mail each charter school sponsored by the school district that the school district is out of compliance with the uniform system of financial records. The notification shall include a statement that if the school district is determined to be out of compliance for a second consecutive year, the charter school will be required to transfer sponsorship to another entity pursuant to subdivision (c) of this paragraph.

(c) In the second consecutive year that a school district is determined to be out of compliance with the uniform system of financial records, within fifteen days of the determination of noncompliance, the school district shall notify by certified mail each charter school sponsored by the school district that the school district is out of compliance with the uniform system of financial records. A charter school that receives a notification of school district noncompliance pursuant to this subdivision shall file a written sponsorship transfer application within forty-five days with the state board of education, the state board for charter schools or the school district governing board if the charter school is located within the geographic boundaries of that school district. A charter school that receives a notification of school district noncompliance may request an extension of time to file a sponsorship transfer application, and the state board of education, the state board for charter schools or a school district governing board may grant an extension of not more than an additional thirty days if good cause exists for the extension. The state board of education and the state board for charter schools shall approve a sponsorship transfer application pursuant to this paragraph.

(d) A school district governing board shall not grant a charter to a charter school that is located outside the geographic boundaries of that school district.

(e) A school district that has been determined to be out of compliance with the uniform system of financial records during either of the previous two fiscal years shall not sponsor a new or transferring charter school.

2. The applicant may submit the application to the state board of education or the state board for charter schools. The state board of education or the state board for charter schools may approve the application if the application meets the requirements of this article and may approve the charter if the proposed sponsor determines, within its sole discretion, that the applicant is sufficiently qualified to operate a charter school and that the applicant is applying to operate as a separate charter holder by considering factors such as whether:

(a) The schools have separate governing bodies, governing body membership, staff, facilities~~,~~ and student population.

(b) Daily operations are carried out by different administrators.

(c) The applicant intends to have an affiliation agreement for the purpose of providing enrollment preferences.

(d) The applicant's charter management organization has multiple charter holders serving varied grade configurations on one physical site or nearby sites serving one community.

(e) It is reconstituting an existing school site population at the same or new site.

(f) It is reconstituting an existing grade configuration from a prior charter holder with at least one grade remaining on the original site with the other grade or grades moving to a new site.

The state board of education or the state board for charter schools may approve any charter schools transferring charters. The state board of education and the state board for charter schools shall approve any charter schools transferring charters from a school district that is determined to be out of compliance with the uniform system of financial records pursuant to this section, but may require the charter school to sign a new charter that is equivalent to the charter awarded by the former sponsor. If the state board of education or the state board for charter schools rejects the preliminary application, the state board of education or the state board for charter schools shall notify the applicant in writing of the reasons for the rejection and of suggestions for improving the application. An applicant may submit a revised application for reconsideration by the state board of education or the state board for charter schools. The applicant may request, and the state board of education or the state board for charter schools may provide, technical assistance to improve the application.

3. The applicant may submit the application to a university under the jurisdiction of the Arizona board of regents, a community college district or a group of community college districts. A university, a community college district or a group of community college districts may approve the application if it meets the requirements of this article and if the proposed sponsor determines, in its sole discretion, that the applicant is sufficiently qualified to operate a charter school.

4. Each applicant seeking to establish a charter school shall submit a full set of fingerprints to the approving agency for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. If an applicant will have direct contact with students, the applicant shall possess a valid fingerprint clearance card that is issued pursuant to title 41, chapter 12, article 3.1. The department of public safety may exchange this fingerprint data with the federal bureau of investigation. The criminal records check shall be completed before the issuance of a charter.

5. All persons engaged in instructional work directly as a classroom, laboratory or other teacher or indirectly as a supervisory teacher, speech therapist or principal shall have a valid fingerprint clearance card that is issued pursuant to title 41, chapter 12, article 3.1, unless the person is a volunteer or guest speaker who is accompanied in the classroom by a person with a valid fingerprint clearance card. A charter school shall not employ a teacher whose certificate has been surrendered or revoked, unless the teacher's certificate has been subsequently reinstated by the state board of education. All other personnel shall be fingerprint checked pursuant to section 15-512, OR THE CHARTER SCHOOL MAY REQUIRE THOSE PERSONNEL TO OBTAIN A FINGERPRINT CLEARANCE CARD ISSUED PURSUANT TO TITLE 41, CHAPTER 12, ARTICLE 3.1. Before employment, the charter school shall make documented, good faith efforts to contact previous employers of a person to obtain information and recommendations that may be relevant to a person's fitness for employment as

prescribed in section 15-512, subsection F. The charter school shall notify the department of public safety if the charter school or sponsor receives credible evidence that a person who possesses a valid fingerprint clearance card is arrested for or is charged with an offense listed in section 41-1758.03, subsection B. Charter schools may hire personnel that have not yet received a fingerprint clearance card if proof is provided of the submission of an application to the department of public safety for a fingerprint clearance card and if the charter school that is seeking to hire the applicant does all of the following:

(a) Documents in the applicant's file the necessity for hiring and placement of the applicant before receiving a fingerprint clearance card.

(b) Ensures that the department of public safety completes a statewide criminal records check on the applicant. A statewide criminal records check shall be completed by the department of public safety every one hundred twenty days until the date that the fingerprint check is completed OR THE FINGERPRINT CLEARANCE CARD IS ISSUED OR DENIED.

(c) Obtains references from the applicant's current employer and the two most recent previous employers except for applicants who have been employed for at least five years by the applicant's most recent employer.

(d) Provides general supervision of the applicant until the date that the fingerprint card is obtained.

(e) Completes a search of criminal records in all local jurisdictions outside of this state in which the applicant has lived in the previous five years.

(f) Verifies the fingerprint status of the applicant with the department of public safety.

6. A charter school that complies with the fingerprinting requirements of this section shall be deemed to have complied with section 15-512 and is entitled to the same rights and protections provided to school districts by section 15-512.

7. If a charter school operator is not already subject to a public meeting or hearing by the municipality in which the charter school is located, the operator of a charter school shall conduct a public meeting at least thirty days before the charter school operator opens a site or sites for the charter school. The charter school operator shall post notices of the public meeting in at least three different locations that are within three hundred feet of the proposed charter school site.

8. A person who is employed by a charter school or who is an applicant for employment with a charter school, who is arrested for or charged with a nonappealable offense listed in section 41-1758.03, subsection B and who does not immediately report the arrest or charge to the person's supervisor or potential employer is guilty of unprofessional conduct and the person shall be immediately dismissed from employment with the charter school or immediately excluded from potential employment with the charter school.

9. A person who is employed by a charter school and who is convicted of any nonappealable offense listed in section 41-1758.03, subsection B or is convicted of any nonappealable offense that amounts to unprofessional conduct under section 15-550 shall immediately do all of the following:

(a) Surrender any certificates issued by the department of education.

(b) Notify the person's employer or potential employer of the conviction.

(c) Notify the department of public safety of the conviction.

(d) Surrender the person's fingerprint clearance card.

D. An entity that is authorized to sponsor charter schools pursuant to this article has no legal authority over or responsibility for a charter school sponsored by a different entity. This subsection does not apply to the state board of education's duty to exercise general supervision over the public school system pursuant to section 15-203, subsection A, paragraph 1.

E. The charter of a charter school shall do all of the following:

1. Ensure compliance with federal, state and local rules, regulations and statutes relating to health, safety, civil rights and insurance. The department of education shall publish a list of relevant rules, regulations and statutes to notify charter schools of their responsibilities under this paragraph.

2. Ensure that it is nonsectarian in its programs, admission policies and employment practices and all other operations.

3. Ensure that it provides a comprehensive program of instruction for at least a kindergarten program or any grade between grades one and twelve, except that a school may offer this curriculum with an emphasis on a specific learning philosophy or style or certain subject areas such as mathematics, science, fine arts, performance arts or foreign language.

4. Ensure that it designs a method to measure pupil progress toward the pupil outcomes adopted by the state board of education pursuant to section 15-741.01, including participation in the Arizona instrument to measure standards test and the nationally standardized norm-referenced achievement test as designated by the state board and the completion and distribution of an annual report card as prescribed in chapter 7, article 3 of this title.

5. Ensure that, except as provided in this article and in its charter, it is exempt from all statutes and rules relating to schools, governing boards and school districts.

6. Ensure that, except as provided in this article, it is subject to the same financial and electronic data submission requirements as a school district, including the uniform system of financial records as prescribed in chapter 2, article 4 of this title, procurement rules as prescribed in section 15-213 and audit requirements. The auditor general shall conduct a comprehensive review and revision of the uniform system of financial records to ensure that the provisions of the uniform system of financial records that relate to charter schools are in accordance with commonly accepted accounting

principles used by private business. A school's charter may include exceptions to the requirements of this paragraph that are necessary as determined by the district governing board, the state board of education or the state board for charter schools. The department of education or the office of the auditor general may conduct financial, program or compliance audits.

7. Ensure compliance with all federal and state laws relating to the education of children with disabilities in the same manner as a school district.

8. Ensure that it provides for a governing body for the charter school that is responsible for the policy decisions of the charter school. Notwithstanding section 1-216, if there is a vacancy or vacancies on the governing body, a majority of the remaining members of the governing body constitute a quorum for the transaction of business, unless that quorum is prohibited by the charter school's operating agreement.

9. Ensure that it provides a minimum of one hundred eighty instructional days before June 30 of each fiscal year unless it is operating on an alternative calendar approved by its sponsor. The superintendent of public instruction shall adjust the apportionment schedule accordingly to accommodate a charter school utilizing an alternative calendar.

F. A charter school shall keep on file the resumes of all current and former employees who provide instruction to pupils at the charter school. Resumes shall include an individual's educational and teaching background and experience in a particular academic content subject area. A charter school shall inform parents and guardians of the availability of the resume information and shall make the resume information available for inspection on request of parents and guardians of pupils enrolled at the charter school. This subsection does not require any charter school to release personally identifiable information in relation to any teacher or employee, including the teacher's or employee's address, salary, social security number or telephone number.

G. The charter of a charter school may be amended at the request of the governing body of the charter school and on the approval of the sponsor.

H. Charter schools may contract, sue and be sued.

I. The charter is effective for fifteen years from the first day of the fiscal year as specified in the charter, subject to the following:

1. At least eighteen months before the expiration of the charter, the sponsor shall notify the charter school that the charter school may apply for renewal and shall make the renewal application available to the charter school. A charter school that elects to apply for renewal shall file a complete renewal application at least fifteen months before the expiration of the charter. A sponsor shall give written notice of its intent not to renew the charter school's request for renewal to the charter school at least twelve months before the expiration of the charter. The sponsor shall make data used in making renewal decisions available to the school and the public

and shall provide a public report summarizing the evidence basis for each decision. The sponsor may deny the request for renewal if, in its judgment, the charter holder has failed to do any of the following:

(a) Meet or make sufficient progress toward the academic performance expectations set forth in the performance framework.

(b) Meet the operational performance expectations set forth in the performance framework or any improvement plans.

(c) Complete the obligations of the contract.

(d) Comply with this article or any provision of law from which the charter school is not exempt.

2. A charter operator may apply for early renewal. At least nine months before the charter school's intended renewal consideration, the operator of the charter school shall submit a letter of intent to the sponsor to apply for early renewal. The sponsor shall review fiscal audits and academic performance data for the charter school that are annually collected by the sponsor, review the current contract between the sponsor and the charter school and provide the qualifying charter school with a renewal application. On submission of a complete application, the sponsor shall give written notice of its consideration of the renewal application. The sponsor may deny the request for early renewal if, in the sponsor's judgment, the charter holder has failed to do any of the following:

(a) Meet or make sufficient progress toward the academic performance expectations set forth in the performance framework.

(b) Meet the operational performance expectations set forth in the performance framework or any improvement plans.

(c) Complete the obligations of the contract.

(d) Comply with this article or any provision of law from which the charter school is not exempt.

3. A sponsor shall review a charter at five-year intervals using a performance framework adopted by the sponsor and may revoke a charter at any time if the charter school breaches one or more provisions of its charter or if the sponsor determines that the charter holder has failed to do any of the following:

(a) Meet or make sufficient progress toward the academic performance expectations set forth in the performance framework.

(b) Meet the operational performance expectations set forth in the performance framework or any improvement plans.

(c) Comply with this article or any provision of law from which the charter school is not exempt.

4. At least sixty days before the effective date of the proposed revocation, the sponsor shall give written notice to the operator of the charter school of its intent to revoke the charter. Notice of the sponsor's intent to revoke the charter shall be delivered personally to the operator of the charter school or sent by certified mail, return receipt requested, to the address of the charter school. The notice shall incorporate a statement

of reasons for the proposed revocation of the charter. The sponsor shall allow the charter school at least sixty days to correct the problems associated with the reasons for the proposed revocation of the charter. The final determination of whether to revoke the charter shall be made at a public hearing called for such purpose.

J. The charter may be renewed for successive periods of twenty years.

K. A charter school that is sponsored by the state board of education, the state board for charter schools, a university, a community college district or a group of community college districts may not be located on the property of a school district unless the district governing board grants this authority.

L. A governing board or a school district employee who has control over personnel actions shall not take unlawful reprisal against another employee of the school district because the employee is directly or indirectly involved in an application to establish a charter school. A governing board or a school district employee shall not take unlawful reprisal against an educational program of the school or the school district because an application to establish a charter school proposes the conversion of all or a portion of the educational program to a charter school. For the purposes of this subsection, "unlawful reprisal" means an action that is taken by a governing board or a school district employee as a direct result of a lawful application to establish a charter school and that is adverse to another employee or an education program and:

1. With respect to a school district employee, results in one or more of the following:

(a) Disciplinary or corrective action.

(b) Detail, transfer or reassignment.

(c) Suspension, demotion or dismissal.

(d) An unfavorable performance evaluation.

(e) A reduction in pay, benefits or awards.

(f) Elimination of the employee's position without a reduction in force by reason of lack of monies or work.

(g) Other significant changes in duties or responsibilities that are inconsistent with the employee's salary or employment classification.

2. With respect to an educational program, results in one or more of the following:

(a) Suspension or termination of the program.

(b) Transfer or reassignment of the program to a less favorable department.

(c) Relocation of the program to a less favorable site within the school or school district.

(d) Significant reduction or termination of funding for the program.

M. Charter schools shall secure insurance for liability and property loss. The governing body of a charter school that is sponsored by the state board of education or the state board for charter schools may enter into an

intergovernmental agreement or otherwise contract to participate in an insurance program offered by a risk retention pool established pursuant to section 11-952.01 or 41-621.01 or the charter school may secure its own insurance coverage. The pool may charge the requesting charter school reasonable fees for any services it performs in connection with the insurance program.

N. Charter schools do not have the authority to acquire property by eminent domain.

O. A sponsor, including members, officers and employees of the sponsor, is immune from personal liability for all acts done and actions taken in good faith within the scope of its authority.

P. Charter school sponsors and this state are not liable for the debts or financial obligations of a charter school or persons who operate charter schools.

Q. The sponsor of a charter school shall establish procedures to conduct administrative hearings on determination by the sponsor that grounds exist to revoke a charter. Procedures for administrative hearings shall be similar to procedures prescribed for adjudicative proceedings in title 41, chapter 6, article 10. Except as provided in section 41-1092.08, subsection H, final decisions of the state board of education and the state board for charter schools from hearings conducted pursuant to this subsection are subject to judicial review pursuant to title 12, chapter 7, article 6.

R. The sponsoring entity of a charter school shall have oversight and administrative responsibility for the charter schools that it sponsors. In implementing its oversight and administrative responsibilities, the sponsor shall ground its actions in evidence of the charter holder's performance in accordance with the performance framework adopted by the sponsor. The performance framework shall be publicly available, shall be placed on the sponsoring entity's website and shall include:

1. The academic performance expectations of the charter school and the measurement of sufficient progress toward the academic performance expectations.

2. The operational expectations of the charter school, including adherence to all applicable laws and obligations of the charter contract.

3. Intervention and improvement policies.

S. Charter schools may pledge, assign or encumber their assets to be used as collateral for loans or extensions of credit.

T. All property accumulated by a charter school shall remain the property of the charter school.

U. Charter schools may not locate a school on property that is less than one-fourth mile from agricultural land regulated pursuant to section 3-365, except that the owner of the agricultural land may agree to comply with the buffer zone requirements of section 3-365. If the owner agrees in writing to comply with the buffer zone requirements and records the agreement in the office of the county recorder as a restrictive covenant running with

the title to the land, the charter school may locate a school within the affected buffer zone. The agreement may include any stipulations regarding the charter school, including conditions for future expansion of the school and changes in the operational status of the school that will result in a breach of the agreement.

V. A transfer of a charter to another sponsor, a transfer of a charter school site to another sponsor or a transfer of a charter school site to a different charter shall be completed before the beginning of the fiscal year that the transfer is scheduled to become effective. An entity that sponsors charter schools may accept a transferring school after the beginning of the fiscal year if the transfer is approved by the superintendent of public instruction. The superintendent of public instruction shall have the discretion to consider each transfer during the fiscal year on a case by case basis. If a charter school is sponsored by a school district that is determined to be out of compliance with this title, the uniform system of financial records or any other state or federal law, the charter school may transfer to another sponsoring entity at any time during the fiscal year. A charter holder seeking to transfer sponsors shall comply with the current charter terms regarding assignment of the charter. A charter holder transferring sponsors shall notify the current sponsor that the transfer has been approved by the new sponsor.

W. Notwithstanding subsection V of this section, a charter holder on an improvement plan must notify parents or guardians of registered students of the intent to transfer the charter and the timing of the proposed transfer. On the approved transfer, the new sponsor shall enforce the improvement plan but may modify the plan based on performance.

X. Notwithstanding subsection Y of this section, the state board for charter schools shall charge a processing fee to any charter school that amends its contract to participate in Arizona online instruction pursuant to section 15-808. The charter Arizona online instruction processing fund is established consisting of fees collected and administered by the state board for charter schools. The state board for charter schools shall use monies in the fund only for the processing of contract amendments for charter schools participating in Arizona online instruction. Monies in the fund are continuously appropriated.

Y. The sponsoring entity may not charge any fees to a charter school that it sponsors unless the sponsor has provided services to the charter school and the fees represent the full value of those services provided by the sponsor. On request, the value of the services provided by the sponsor to the charter school shall be demonstrated to the department of education.

Z. Charter schools may enter into an intergovernmental agreement with a presiding judge of the juvenile court to implement a law related education program as defined in section 15-154. The presiding judge of the juvenile court may assign juvenile probation officers to participate in a law related education program in any charter school in the county. The cost of juvenile

probation officers who participate in the program implemented pursuant to this subsection shall be funded by the charter school.

AA. The sponsor of a charter school shall modify previously approved curriculum requirements for a charter school that wishes to participate in the board examination system prescribed in chapter 7, article 6 of this title.

BB. If a charter school decides not to participate in the board examination system prescribed in chapter 7, article 6 of this title, pupils enrolled at that charter school may earn a Grand Canyon diploma by obtaining a passing score on the same board examinations.

CC. Notwithstanding subsection Y of this section, a sponsor of charter schools may charge a new charter application processing fee to any applicant. The application fee shall fully cover the cost of application review and any needed technical assistance. Authorizers may approve policies that allow a portion of the fee to be returned to the applicant whose charter is approved.

DD. A charter school may choose to provide a preschool program for children with disabilities pursuant to section 15-771.

Sec. 2. Section 15-512, Arizona Revised Statutes, is amended to read:

15-512. <u>Noncertificated personnel; fingerprinting personnel; background investigations; affidavit; civil immunity; violation; classification; definition</u>

A. Noncertificated personnel and personnel who are not paid employees of the school district and who are not either the parent or the guardian of a pupil who attends school in the school district but who are required or allowed to provide services directly to pupils without the supervision of a certificated employee and who are initially hired by a school district after January 1, 1990 shall be fingerprinted as a condition of employment except for personnel who are required as a condition of licensing to be fingerprinted if the license is required for employment or for personnel who were previously employed by a school district and who reestablished employment with that district within one year after the date that the employee terminated employment with the district. A SCHOOL DISTRICT MAY REQUIRE NONCERTIFICATED PERSONNEL AND PERSONNEL WHO ARE NOT PAID EMPLOYEES OF THE SCHOOL DISTRICT AND WHO ARE NOT EITHER THE PARENT OR THE GUARDIAN OF A PUPIL WHO ATTENDS SCHOOL IN THE SCHOOL DISTRICT BUT WHO ARE REQUIRED OR ALLOWED TO PROVIDE SERVICES DIRECTLY TO PUPILS WITHOUT THE SUPERVISION OF A CERTIFICATED EMPLOYEE TO OBTAIN A FINGERPRINT CLEARANCE CARD AS A CONDITION OF EMPLOYMENT. EVEN IF THE SCHOOL DISTRICT DOES NOT REQUIRE A FINGERPRINT CLEARANCE CARD AS A CONDITION OF EMPLOYMENT, NONCERTIFICATED PERSONNEL AND PERSONNEL WHO ARE NOT PAID EMPLOYEES OF THE SCHOOL DISTRICT AND WHO ARE NOT EITHER THE PARENT OR THE GUARDIAN OF A PUPIL WHO ATTENDS SCHOOL IN THE SCHOOL DISTRICT BUT WHO ARE REQUIRED OR ALLOWED TO PROVIDE SERVICES DIRECTLY TO PUPILS WITHOUT THE SUPERVISION OF A CERTIFICATED EMPLOYEE MAY APPLY FOR A FINGERPRINT CLEARANCE CARD. A school district may release the results of a background check OR COMMUNICATE WHETHER THE PERSON HAS BEEN ISSUED OR DENIED

A FINGERPRINT CLEARANCE CARD to another school district for employment purposes. The employee's fingerprints and the form prescribed in subsection D of this section shall be submitted to the school district within twenty days after the date an employee begins work. A school district may terminate an employee if the information on the form provided under subsection D of this section is inconsistent with the information received from the fingerprint check OR THE INFORMATION RECEIVED IN CONNECTION WITH A FINGERPRINT CLEARANCE CARD APPLICATION. The school district shall develop procedures for fingerprinting employees. For the purposes of this subsection, "supervision" means under the direction of and, except for brief periods of time during a school day or a school activity, within sight of a certificated employee when providing direct services to pupils.

B. Fingerprints submitted pursuant to this section shall be used to conduct a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.

C. The school district shall assume the costs of fingerprint checks AND FINGERPRINT CLEARANCE CARDS and may charge these costs to its fingerprinted employee, except that the school district may not charge the costs of the fingerprint check OR THE FINGERPRINT CLEARANCE CARD to personnel of the school district who are not paid employees. The fees charged for fingerprinting shall be deposited with the county treasurer who shall credit the deposit to the fingerprint fund of the school district. The costs charged to a fingerprinted employee are limited to and the proceeds in the fund may only be applied to the actual costs, including personnel costs, incurred as a result of the fingerprint checks OR THE FINGERPRINT CLEARANCE CARDS. The fingerprint fund is a continuing fund ~~which~~ THAT is not subject to reversion.

D. Personnel required to be fingerprinted OR OBTAIN A FINGERPRINT CLEARANCE CARD as prescribed in subsection A of this section shall certify on forms that are provided by the school and notarized whether they are awaiting trial on or have ever been convicted of or admitted in open court or pursuant to a plea agreement committing any of the following criminal offenses in this state or similar offenses in another jurisdiction:

1. Sexual abuse of a minor.
2. Incest.
3. First or second degree murder.
4. Kidnapping.
5. Arson.
6. Sexual assault.
7. Sexual exploitation of a minor.
8. Felony offenses involving contributing to the delinquency of a minor.
9. Commercial sexual exploitation of a minor.

10. Felony offenses involving sale, distribution or transportation of, offer to sell, transport, or distribute or conspiracy to sell, transport or distribute marijuana or dangerous or narcotic drugs.

11. Felony offenses involving the possession or use of marijuana, dangerous drugs or narcotic drugs.

12. Misdemeanor offenses involving the possession or use of marijuana or dangerous drugs.

13. Burglary in the first degree.

14. Burglary in the second or third degree.

15. Aggravated or armed robbery.

16. Robbery.

17. A dangerous crime against children as defined in section 13-705.

18. Child abuse.

19. Sexual conduct with a minor.

20. Molestation of a child.

21. Manslaughter.

22. Aggravated assault.

23. Assault.

24. Exploitation of minors involving drug offenses.

E. A school district may refuse to hire or may review or terminate personnel who have been convicted of or admitted committing any of the criminal offenses prescribed in subsection D of this section or of a similar offense in another jurisdiction. A school district ~~which~~ THAT is considering terminating an employee pursuant to this subsection shall hold a hearing to determine whether a person already employed shall be terminated. In conducting a review, the governing board shall utilize the guidelines, including the list of offenses that are not subject to review, as prescribed by the state board of education pursuant to section 15-534, subsection C. In considering whether to hire or terminate the employment of a person the governing board shall take into account the following factors:

1. The nature of the crime and the potential for crimes against children.

2. Offenses committed as a minor for which proceedings were held under the jurisdiction of a juvenile or an adult court.

3. Offenses that have been expunged by a court of competent jurisdiction, if the person has been pardoned or if the person's sentence has been commuted.

4. The employment record of the person since the commission of the crime if the crime was committed more than ten years before the governing board's consideration of whether to hire or terminate the person.

5. The reliability of the evidence of an admission of a crime unless made under oath in a court of competent jurisdiction.

F. Before employment with the school district, the district shall make documented, good faith efforts to contact previous employers of a person to obtain information and recommendations ~~which~~ THAT may be relevant to a

person's fitness for employment. A governing board shall adopt procedures for conducting background investigations required by this subsection, including one or more standard forms for use by school district officials to document their efforts to obtain information from previous employers. A school district may provide information received as a result of a background investigation required by this section to any other school district, to any other public school and to any public entity that agrees pursuant to a contract or intergovernmental agreement to perform background investigations for school districts or other public schools. School districts and other public schools may enter into intergovernmental agreements pursuant to section 11-952 and cooperative purchasing agreements pursuant to rules adopted in accordance with section 15-213 for the purposes of performing or contracting for the performance of background investigations and for sharing the results of background investigations required by this subsection. Information obtained about an employee or applicant for employment by any school district or other public school in the performance of a background investigation may be retained by that school district or the other public school or by any public entity that agrees pursuant to contract to perform background investigations for school districts or other public schools and may be provided to any school district or other public school that is performing a background investigation required by this subsection.

G. A school district may fingerprint OR REQUIRE any other employee of the district TO OBTAIN A FINGERPRINT CLEARANCE CARD, whether paid or not, or any other applicant for employment with the school district not otherwise required by this section to be fingerprinted OR OBTAIN A FINGERPRINT CLEARANCE CARD on the condition that the school district may not charge the costs of the fingerprint check OR FINGERPRINT CLEARANCE CARD to the fingerprinted applicant or nonpaid employee.

H. A contractor, subcontractor or vendor or any employee of a contractor, subcontractor or vendor who is contracted to provide services on a regular basis at an individual school shall obtain a valid fingerprint clearance card pursuant to title 41, chapter 12, article 3.1. ~~By December 31, 2009,~~ A school district governing board shall adopt policies to ~~be implemented sixty days after adoption that may~~ exempt ~~from the requirements of this subsection persons who, as part of the normal job duties of the persons, are not likely to have independent access to or unsupervised contact with pupils~~ A PERSON FROM THE REQUIREMENTS OF THIS SUBSECTION IF THE PERSON'S NORMAL JOB DUTIES ARE NOT LIKELY TO RESULT IN INDEPENDENT ACCESS TO OR UNSUPERVISED CONTACT WITH PUPILS. A school district, its governing board members, its school council members and its employees are exempt from civil liability for the consequences of adoption and implementation of policies and procedures pursuant to this subsection unless the school district, its governing board members, its school council members or its employees are guilty of gross negligence or intentional misconduct.

I. Subsection A of this section does not apply to a person who provides instruction or other education services to a pupil, with the written consent of the parent or guardian of the pupil, under a work release program, advance placement course or other education program that occurs off school property.

J. Public entities that agree pursuant to contract to perform background investigations, public schools, the department of education and previous employers who provide information pursuant to this section are immune from civil liability unless the information provided is false and is acted on by the school district to the harm of the employee and the public entity, the public school, the previous employer or the department of education knows the information is false or acts with reckless disregard of the information's truth or falsity. A school district ~~which~~ THAT relies on information obtained pursuant to this section in making employment decisions is immune from civil liability for use of the information unless the information obtained is false and the school district knows the information is false or acts with reckless disregard of the information's truth or falsity.

K. The superintendent of a school district or chief administrator of a charter school or the person's designee who is responsible for implementing the governing board's policy regarding background investigations required by subsection F of this section and who fails to carry out that responsibility is guilty of unprofessional conduct and shall be subject to disciplinary action by the state board.

L. A school district may hire noncertificated personnel before receiving the results of the fingerprint check OR A FINGERPRINT CLEARANCE CARD but may terminate employment if the information on the form provided in subsection D of this section is inconsistent with the information received from the fingerprint check OR THE FINGERPRINT CLEARANCE CARD. In addition to any other conditions or requirements deemed necessary by the superintendent of public instruction to protect the health and safety of pupils, noncertificated personnel who are required or allowed unsupervised contact with pupils may be hired by school districts before the results of a fingerprint check are received OR A FINGERPRINT CLEARANCE CARD IS ISSUED if all of the following conditions are met:

1. The school district that is seeking to hire the applicant shall document in the applicant's file the necessity for hiring and placement of the applicant before a fingerprint check could be completed OR A FINGERPRINT CLEARANCE CARD COULD BE ISSUED.

2. The school district that is seeking to hire the applicant shall do all of the following:

(a) Ensure that the department of public safety completes a statewide criminal history information check on the applicant. A statewide criminal history information check shall be completed by the department of public

safety every one hundred twenty days until the date that the fingerprint check is completed OR THE FINGERPRINT CLEARANCE CARD IS ISSUED OR DENIED.

(b) Obtain references from the applicant's current employer and two most recent previous employers except for applicants who have been employed for at least five years by the applicant's most recent employer.

(c) Provide general supervision of the applicant until the date that the fingerprint check is completed OR THE FINGERPRINT CLEARANCE CARD IS ISSUED OR DENIED.

(d) Report to the superintendent of public instruction on June 30 and December 31 EACH YEAR the number of applicants hired before the completion of a fingerprint check OR THE ISSUANCE OF A FINGERPRINT CLEARANCE CARD. In addition, the school district shall report the number of applicants for whom fingerprint checks were not received OR FINGERPRINT CLEARANCE CARDS WERE NOT ISSUED after one hundred twenty days and after one hundred seventy-five days of hire.

M. Notwithstanding any other law, this section does not apply to pupils who attend school in a school district and who are also employed by a school district.

N. A person who makes a false statement, representation or certification in any application for employment with the school district is guilty of a class 3 misdemeanor.

O. For the purposes of this section, "background investigation" means any communication with an employee's or applicant's former employer that concerns the education, training, experience, qualifications and job performance of the employee or applicant and that is used for the purpose of evaluating the employee or applicant for employment. Background investigation does not include the results of any state or federal criminal history records check.

Sec. 3. Section 23-1361, Arizona Revised Statutes, is amended to read:

23-1361. <u>Blacklist; definition; exceptions; privileged communications; immunity</u>

A. "Blacklist" means any understanding or agreement whereby the names of any person or persons, list of names, descriptions or other means of identification shall be spoken, written, printed or implied for the purpose of being communicated or transmitted between two or more employers of labor, or their bosses, foremen, superintendents, managers, officers or other agents, whereby the laborer is prevented or prohibited from engaging in a useful occupation. Any understanding or agreement between employers, or their bosses, foremen, superintendents, managers, officers or other agents, whether written or verbal, comes within the meaning of this section and it makes no difference whether the employers, or their bosses, foremen, superintendents, managers, officers or other agents, act individually or for some company, corporation, syndicate, partnership or society and it makes no difference whether they are employed or acting as agents for the same or different companies, corporations, syndicates, partnerships or societies.

B. It is not unlawful for a former employer to provide to a requesting employer, or agents acting in the employer's behalf, information concerning a person's education, training, experience, qualifications and job performance to be used for the purpose of evaluating the person for employment. It is not unlawful for a school district to provide information received as a result of a fingerprint check required by section 15-512 to any other school district if requested to do so by the person who was the subject of the fingerprint check OR COMMUNICATE TO ANY SCHOOL DISTRICT IF REQUESTED TO DO SO BY THE PERSON WHO APPLIED FOR A FINGERPRINT CLEARANCE CARD WHETHER THE PERSON HAS BEEN ISSUED OR DENIED A FINGERPRINT CLEARANCE CARD. A copy of any written communication regarding employment must be sent by the employer providing the information to the former employee's last known address.

C. An employer who in good faith provides information requested by a prospective employer about the reason for termination of a former employee or about the job performance, professional conduct or evaluation of a current or former employee is immune from civil liability for the disclosure or the consequences of providing the information. There is a presumption of good faith if either:

1. The employer employs less than one hundred employees and provides only the information authorized by this subsection.

2. The employer employs at least one hundred employees and has a regular practice in this state of providing information requested by a prospective employer about the reason for termination of a former employee or about the job performance, professional conduct or evaluation of a current or former employee.

D. The presumption of good faith under subsection C of this section is rebuttable by showing that the employer disclosed the information with actual malice or with intent to mislead. This subsection and subsection C of this section do not alter any privileges that exist under common law. For the purposes of this subsection, "actual malice" means knowledge that the information was false or was provided with reckless disregard of its truth or falsity.

E. Communications concerning employees or prospective employees that are made by an employer or prospective employer, or by a labor organization, to a government body or agency and that are required by law or that are furnished pursuant to written rules or policies of the government body or agency are privileged.

F. An employer, including this state and its agencies, a labor organization or an individual is not civilly liable for privileged communications made pursuant to subsection E of this section.

G. In response to a request by another bank, savings and loan association, credit union, escrow agent, commercial mortgage banker, mortgage banker or mortgage broker it is not unlawful for a bank, a savings and loan association, a credit union, an escrow agent, a commercial mortgage banker, a mortgage banker or a mortgage broker to provide a written employment

reference that advises of the applicant's involvement in any theft, embezzlement, misappropriation or other defalcation that has been reported to federal authorities pursuant to federal banking guidelines or reported to the department of financial institutions. In order for the immunity provided in subsection H of this section to apply, a copy of the written employment reference must be sent by the institution providing the reference to the last known address of the applicant in question.

H. No bank, savings and loan association, credit union, escrow agent, commercial mortgage banker, mortgage banker or mortgage broker shall be civilly liable for providing an employment reference unless the information provided is false and the bank, savings and loan association, credit union, escrow agent, commercial mortgage banker, mortgage banker or mortgage broker providing the false information does so with knowledge and malice.

I. A court shall award court costs, attorney fees and other related expenses to any party that prevails in any civil proceeding in which a violation of this section is alleged.

APPROVED BY THE GOVERNOR APRIL 22, 2014.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 23, 2014.

Passed the House April 15, 2014,

by the following vote: 60 Ayes,

0 Nays, 0 Not Voting

Speaker of the House

Chief Clerk of the House

Passed the Senate February 27, 2014,

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

_____ 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. 1391

SENATE CONCURS IN HOUSE AMENDMENTS AND FINAL PASSAGE

Passed the Senate April 16, 2014

by the following vote: 27 Ayes,

2 Nays, 1 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

17 day of April, 2014

at 8:20 o'clock A M.

Secretary to the Governor

Approved this 22nd day of

April

at 3:34 o'clock P. M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 23rd day of April, 2014

at 9:40 o'clock a M.

Secretary of State

S.B. 1391