

Senate Engrossed

FILED
MICHELE REAGAN
SECRETARY OF STATE

State of Arizona
Senate
Fifty-second Legislature
Second Regular Session
2016

CHAPTER 353

SENATE BILL 1280

AN ACT

AMENDING SECTIONS 15-2401, 15-2402 AND 15-2403, ARIZONA REVISED STATUTES;
RELATING TO ARIZONA EMPOWERMENT SCHOLARSHIP ACCOUNTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 15-2401, Arizona Revised Statutes, is amended to
3 read:

4 15-2401. Definitions

5 In this chapter, unless the context otherwise requires:

6 1. "Curriculum" means a complete course of study for a particular
7 content area AREAS or grade level LEVELS, including any supplemental
8 materials required by the curriculum, APPROVED BY THE DEPARTMENT.

9 2. "Department" means the department of education.

10 3. "Eligible postsecondary institution" means a community college as
11 defined in section 15-1401, a university under the jurisdiction of the
12 Arizona board of regents or an accredited private postsecondary institution.

13 4. "Parent" means a resident of this state who is the parent or legal
14 guardian of a qualified student.

15 5. "Qualified school" means a nongovernmental primary or secondary
16 school or a preschool for pupils with disabilities that is located in this
17 state and that does not discriminate on the basis of race, color or national
18 origin.

19 6. "Qualified student" means a resident of this state who:

20 (a) Is any of the following:

21 (i) Identified as having a disability under section 504 of the
22 rehabilitation act of 1973 (29 United States Code section 794).

23 (ii) Identified by a school district or by an independent third party
24 pursuant to section 15-2403, subsection I as a child with a disability as
25 defined in section 15-761 OR 15-731.

26 (iii) A child with a disability who is eligible to receive services
27 from a school district under section 15-763.

28 (iv) Attending a school or school district that has been assigned a
29 letter grade of D or F pursuant to section 15-241 or who is currently
30 eligible to attend kindergarten and who resides within the attendance
31 boundary of a school that has been assigned a letter grade of D or F pursuant
32 to section 15-241.

33 (v) A previous recipient of a scholarship issued pursuant to section
34 15-891 or this section, UNLESS THE QUALIFIED STUDENT'S PARENT HAS BEEN
35 REMOVED FROM ELIGIBILITY IN THE PROGRAM FOR FAILURE TO COMPLY PURSUANT TO
36 SECTION 15-2403, SUBSECTION C.

37 (vi) A child of a parent who is a member of the armed forces of the
38 United States and who is on active duty or was killed in the line of duty. A
39 child who meets the requirements of this item is not subject to subdivision
40 (b) of this paragraph.

41 ~~(vii) A child with a guardian who is a member of the armed forces of~~
42 ~~the United States and who is on active duty or was killed in the line of~~
43 ~~duty. A child who meets the requirements of this item is not subject to~~
44 ~~subdivision (b) of this paragraph.~~

1 ~~(viii)~~ (vii) A child who is a ward of the juvenile court and who is
2 residing with a prospective permanent placement pursuant to section 8-862 and
3 the case plan is adoption or permanent guardianship.

4 ~~(ix)~~ (viii) A child who was a ward of the juvenile court and who
5 achieved permanency through adoption or permanent guardianship.

6 ~~(x)~~ (ix) A child who is the sibling of a current or previous
7 empowerment scholarship account recipient OR OF AN ELIGIBLE QUALIFIED STUDENT
8 WHO ACCEPTS THE TERMS OF AND ENROLLS IN THE EMPOWERMENT SCHOLARSHIP PROGRAM.

9 ~~(xi)~~ (x) A child who resides within the boundaries of an Indian
10 reservation in this state AS DETERMINED BY THE DEPARTMENT OF EDUCATION OR A
11 TRIBAL GOVERNMENT.

12 (xi) A CHILD OF A PARENT WHO IS LEGALLY BLIND PURSUANT TO SECTION
13 41-1973, SUBSECTION C OR DEAF OR HARD OF HEARING PURSUANT TO SECTION 36-1941.

14 (b) And, except as provided in subdivision (a), ~~items~~ ITEM (vi) and
15 ~~(vii)~~ of this paragraph, who meets any of the following requirements:

16 (i) Attended a governmental primary or secondary school as a full-time
17 student as defined in section 15-901 for at least the first one hundred days
18 of the prior fiscal year and who transferred from a governmental primary or
19 secondary school under a contract to participate in an empowerment
20 scholarship account. FIRST, SECOND AND THIRD GRADE STUDENTS WHO ARE ENROLLED
21 IN ARIZONA ONLINE INSTRUCTION MUST RECEIVE FOUR HUNDRED HOURS OF LOGGED
22 INSTRUCTION TO BE ELIGIBLE PURSUANT TO THIS ITEM. FOURTH, FIFTH AND SIXTH
23 GRADE STUDENTS WHO ARE ENROLLED IN ARIZONA ONLINE INSTRUCTION MUST RECEIVE
24 FIVE HUNDRED HOURS OF LOGGED INSTRUCTION TO BE ELIGIBLE PURSUANT TO THIS
25 ITEM. SEVENTH AND EIGHTH GRADE STUDENTS WHO ARE ENROLLED IN ARIZONA ONLINE
26 INSTRUCTION MUST RECEIVE FIVE HUNDRED FIFTY HOURS OF LOGGED INSTRUCTION TO BE
27 ELIGIBLE PURSUANT TO THIS ITEM. HIGH SCHOOL STUDENTS WHO ARE ENROLLED IN
28 ARIZONA ONLINE INSTRUCTION MUST RECEIVE FIVE HUNDRED HOURS OF LOGGED
29 INSTRUCTION TO BE ELIGIBLE PURSUANT TO THIS ITEM.

30 (ii) Previously participated in the empowerment scholarship account
31 program.

32 (iii) Received a scholarship under section 43-1505 and who continues
33 to attend a qualified school if the student attended a governmental primary
34 or secondary school as a full-time student as defined in section 15-901 for
35 at least ninety days of the prior fiscal year or one full semester prior to
36 attending a qualified school.

37 (iv) Was eligible for an Arizona scholarship for pupils with
38 disabilities and received monies from a school tuition organization pursuant
39 to section 43-1505 or received an Arizona scholarship for pupils with
40 disabilities but did not receive monies from a school tuition organization
41 pursuant to section 43-1505 and who continues to attend a qualified school if
42 the student attended a governmental primary or secondary school as a
43 full-time student as defined in section 15-901 for at least ninety days of
44 the prior fiscal year or one full semester prior to attending a qualified
45 school.

1 (v) Has not previously attended a governmental primary or secondary
2 school but is currently eligible to enroll in a kindergarten program in a
3 school district or charter school in this state OR ATTENDED A PROGRAM FOR
4 PRESCHOOL CHILDREN WITH DISABILITIES.

5 (vi) Has not previously attended a governmental primary or secondary
6 school but is currently eligible to enroll in a program for preschool
7 children with disabilities in this state.

8 7. "Treasurer" means the office of the state treasurer.

9 Sec. 2. Section 15-2402, Arizona Revised Statutes, is amended to read:
10 15-2402. Arizona empowerment scholarship accounts; funds

11 A. Arizona empowerment scholarship accounts are established to provide
12 options for the education of students in this state.

13 B. To enroll a qualified student for an empowerment scholarship
14 account, the parent of the qualified student must sign an agreement to do all
15 of the following:

16 1. Use a portion of the empowerment scholarship account monies
17 allocated ~~each quarter~~ ANNUALLY to provide an education for the qualified
18 student in at least the subjects of reading, grammar, mathematics, social
19 studies and science, unless the empowerment scholarship account is allocated
20 monies according to a transfer schedule other than quarterly transfers
21 pursuant to section 15-2403, subsection F.

22 2. Not enroll the qualified student in a school district or charter
23 school and release the school district from all obligations to educate the
24 qualified student. This paragraph does not relieve the school district or
25 charter school that the qualified student previously attended from the
26 obligation to conduct an evaluation pursuant to section 15-766.

27 3. Not accept a scholarship from a school tuition organization
28 pursuant to title 43 concurrently with an empowerment scholarship account for
29 the qualified student in the same year a parent signs the agreement pursuant
30 to this section.

31 4. Use the money deposited in the qualified student's Arizona
32 empowerment scholarship account only for the following expenses of the
33 qualified student:

34 (a) Tuition or fees at a qualified school.

35 (b) Textbooks required by a qualified school.

36 ~~(c) Educational therapies or services from a licensed or accredited
37 practitioner or provider, including licensed or accredited paraprofessionals
38 or educational aides, if the qualified student meets any of the criteria
39 specified in section 15-2401, paragraph 6, subdivision (a), item (i), (ii) or
40 (iii) as determined by a school district or by an independent third party
41 pursuant to section 15-2403, subsection I.~~

42 (c) IF THE QUALIFIED STUDENT MEETS ANY OF THE CRITERIA SPECIFIED IN
43 SECTION 15-2401, PARAGRAPH 6, SUBDIVISION (a), ITEM (i), (ii) OR (iii) AS
44 DETERMINED BY A SCHOOL DISTRICT OR BY AN INDEPENDENT THIRD PARTY PURSUANT TO

1 SECTION 15-2403, SUBSECTION I, THE QUALIFIED STUDENT MAY USE THE FOLLOWING
2 ADDITIONAL SERVICES:

3 (i) EDUCATIONAL THERAPIES FROM A LICENSED OR ACCREDITED PRACTITIONER
4 OR PROVIDER.

5 (ii) A LICENSED OR ACCREDITED PARAPROFESSIONAL OR EDUCATIONAL AIDE.

6 (iii) TUITION FOR VOCATIONAL AND LIFE SKILLS EDUCATION APPROVED BY THE
7 DEPARTMENT.

8 (iv) ASSOCIATED SERVICES THAT INCLUDE EDUCATIONAL AND PSYCHOLOGICAL
9 EVALUATIONS, ASSISTIVE TECHNOLOGY RENTALS AND BRAILLE TRANSLATION SERVICES
10 APPROVED BY THE DEPARTMENT.

11 (d) Tutoring or teaching services provided by an individual or
12 facility accredited by a state, regional or national accrediting
13 organization.

14 (e) ~~Curriculum~~ CURRICULA.

15 (f) Tuition or fees for a nonpublic online learning program.

16 (g) Fees for a nationally standardized norm-referenced achievement
17 test, an advanced placement examination or any exams related to college or
18 university admission.

19 (h) Contributions to a Coverdell education savings account established
20 pursuant to 26 United States Code section 530 for the benefit of the
21 qualified student, except that money used for elementary or secondary
22 education expenses must be for expenses otherwise allowed under this section.

23 (i) Tuition or fees at an eligible postsecondary institution.

24 (j) Textbooks required by an eligible postsecondary institution.

25 (k) Fees for management of the empowerment scholarship account ~~by~~
26 ~~firms selected by the treasurer.~~

27 (l) Services provided by a public school, including individual classes
28 and extracurricular programs.

29 (m) Insurance or surety bond payments ~~as required by the department of~~
30 ~~education.~~

31 (n) UNIFORMS PURCHASED FROM OR THROUGH A QUALIFIED SCHOOL.

32 5. Not file an affidavit of intent to homeschool pursuant to section
33 15-802, subsection B, paragraph 2 or 3.

34 6. Not use monies deposited in the qualified student's account for any
35 of the following:

36 (a) Computer hardware or other technological devices.

37 (b) Transportation of the pupil.

38 (c) Consumable educational supplies, including paper, pens or markers.

39 C. In exchange for the parent's agreement pursuant to subsection B of
40 this section, the department shall transfer from the monies that would
41 otherwise be allocated to a recipient's prior school district, or if the
42 child is currently eligible to attend kindergarten, the monies that the
43 department determines would otherwise be allocated to a recipient's expected
44 school district of attendance, to the treasurer for deposit into an Arizona
45 empowerment scholarship account an amount that is equivalent to ninety per

1 ~~cent~~ PERCENT of the sum of the base support level and additional assistance
2 prescribed in sections 15-185 and 15-943 for that particular student if that
3 student were attending a charter school. The department may retain up to
4 five ~~per-cent~~ PERCENT of the sum of the base support level and additional
5 assistance prescribed in sections 15-185 and 15-943 for each student with an
6 empowerment scholarship account for deposit in the department of education
7 empowerment scholarship account fund established in subsection D of this
8 section, out of which the department shall transfer one ~~per-cent~~ PERCENT of
9 the sum of the base support level and additional assistance prescribed in
10 sections 15-185 and 15-943 for each student with an empowerment scholarship
11 account to the state treasurer for deposit in the state treasurer empowerment
12 scholarship account fund established in subsection E of this section.

13 D. The department of education empowerment scholarship account fund is
14 established consisting of monies retained by the department pursuant to
15 subsection C of this section. The department shall administer the fund.
16 Monies in the fund are subject to legislative appropriation. Monies in the
17 fund shall be used for the department's costs in administering empowerment
18 scholarship accounts under this chapter. Monies in the fund are exempt from
19 the provisions of section 35-190 relating to lapsing of appropriations. If
20 the number of empowerment scholarship accounts significantly increases after
21 fiscal year 2012-2013, the department may request an increase in the amount
22 appropriated to the fund in any subsequent fiscal year in the budget estimate
23 submitted pursuant to section 35-113.

24 E. The state treasurer empowerment scholarship account fund is
25 established consisting of monies transferred by the department to the state
26 treasurer pursuant to subsection C of this section. The state treasurer
27 shall administer the fund. Monies in the fund shall be used for the state
28 treasurer's costs in administering the empowerment scholarship accounts under
29 this chapter. If the number of empowerment scholarship accounts
30 significantly increases after fiscal year 2013-2014, the state treasurer may
31 request an increase in the amount appropriated to the fund in any subsequent
32 fiscal year in the budget estimate submitted pursuant to section 35-113.
33 Monies in the fund are subject to legislative appropriation. Monies in the
34 fund are exempt from the provisions of section 35-190 relating to lapsing of
35 appropriations.

36 F. A parent must renew the qualified student's empowerment scholarship
37 account on an annual basis. Notwithstanding any changes to the student's
38 multidisciplinary evaluation team plan, a student who has previously
39 qualified for an empowerment scholarship account shall remain eligible to
40 apply for renewal until the student finishes high school.

41 G. A signed agreement under this section constitutes school attendance
42 required by section 15-802.

43 H. A qualified school or a provider of services purchased pursuant to
44 subsection B, paragraph 4 of this section may not share, refund or rebate any

1 Arizona empowerment scholarship account monies with the parent or qualified
2 student in any manner.

3 I. On the qualified student's graduation from a postsecondary
4 institution or after any period of four consecutive years after high school
5 graduation in which the student is not enrolled in an eligible postsecondary
6 institution, the qualified student's Arizona empowerment scholarship account
7 shall be closed and any remaining funds shall be returned to the state.

8 J. Monies received pursuant to this article do not constitute taxable
9 income to the parent of the qualified student.

10 Sec. 3. Section 15-2403, Arizona Revised Statutes, is amended to read:

11 15-2403. Empowerment scholarship accounts; administration;
12 audit; rules

13 A. The treasurer may contract with private financial management firms
14 to manage Arizona empowerment scholarship accounts ~~with the supervision of~~
15 ~~the treasurer.~~

16 B. The department shall conduct or contract for annual audits of
17 empowerment scholarship accounts to ensure compliance with section 15-2402,
18 subsection B, paragraph 4. The department shall also conduct or contract for
19 random, quarterly and annual audits of empowerment scholarship accounts as
20 needed to ensure compliance with section 15-2402, subsection B, paragraph 4.

21 C. The department may remove any parent or qualified student from
22 eligibility for an Arizona empowerment scholarship account if the parent or
23 qualified student fails to comply with the terms of the contract or
24 applicable laws, rules or orders or knowingly misuses monies or knowingly
25 fails to comply with the terms of the contract with intent to defraud and
26 shall notify the treasurer. The department shall notify the treasurer to
27 suspend the account of a parent or qualified student and shall notify the
28 parent or qualified student in writing that the account has been suspended
29 and that no further transactions will be allowed or disbursements made. The
30 notification shall specify the reason for the suspension and state that the
31 parent or qualified student has ten days, not including weekends, to respond
32 and take corrective action. If the parent or qualified student refuses or
33 fails to contact the department, furnish any information or make any report
34 that may be required for reinstatement within the ten-day period, the
35 department may remove the parent or qualified student pursuant to this
36 subsection.

37 D. A parent may appeal the department's decision pursuant to title 41,
38 chapter 6, article 10.

39 E. The department may refer cases of substantial misuse of monies to
40 the attorney general for THE PURPOSE OF COLLECTION OR FOR THE PURPOSE OF A
41 CRIMINAL investigation if the department obtains evidence of fraudulent use
42 of an account.

43 F. The department shall make quarterly transfers of the amount
44 calculated pursuant to section 15-2402, subsection C to the treasurer for
45 deposit into the empowerment scholarship account of each qualified student,

1 except the department may make transfers according to another transfer
2 schedule if the department determines a transfer schedule other than
3 quarterly transfers is necessary for the operation of the empowerment
4 scholarship account.

5 G. The department shall ~~determine a period that is~~ ACCEPT APPLICATIONS
6 between July 1 and ~~May 1~~ JUNE 30 of each year ~~during which it will accept~~
7 ~~applications for the following fiscal year.~~ THE DEPARTMENT SHALL ENROLL AND
8 ISSUE AN AWARD LETTER TO ELIGIBLE APPLICANTS WITHIN FORTY-FIVE DAYS AFTER
9 RECEIPT OF A COMPLETED APPLICATION AND ALL REQUIRED DOCUMENTATION. On or
10 before May 30 of each year, the department shall furnish to the joint
11 legislative budget committee an estimate of the amount required to fund
12 empowerment scholarship accounts for the following fiscal year. The
13 department shall include in its budget request for the following fiscal year
14 the amount estimated in section 15-2402, subsection C for each qualified
15 student.

16 H. The department may adopt rules and policies necessary for the
17 administration of empowerment scholarship accounts, including:

18 1. Policies for conducting or contracting for examinations of the use
19 of account monies.

20 2. Conducting or contracting for random, quarterly and annual reviews
21 of accounts.

22 3. Establishing or contracting for the establishment of an online
23 anonymous fraud reporting service.

24 4. Establishing an anonymous telephone hotline for fraud reporting.

25 5. Policies that require a surety bond or insurance for account
26 holders.

27 I. The department shall contract with an independent third party for
28 the purposes of determining if a qualified student is eligible to receive
29 educational therapies or services pursuant to section 15-2402, subsection B,
30 paragraph 4, subdivision (c).

APPROVED BY THE GOVERNOR MAY 19, 2016.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 19, 2016.

Passed the House May 6, 2016,

Passed the Senate February 29, 2016,

by the following vote: 33 Ayes,
23 Nays, 4 Not Voting

by the following vote: 17 Ayes,
13 Nays, 0 Not Voting

[Signature]
Speaker of the House
Jim Drake
Chief Clerk of the House

[Signature]
President of the Senate
Susan Owens
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this
6th day of May, 2016,
at 5:56 o'clock P. M.

[Signature]
Secretary to the Governor

Approved this 19th day of
May, 2016,

at 11:57 o'clock A. M.
[Signature]
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State
this 19th day of May, 2016,

at 3:20 o'clock P. M.
[Signature]
Secretary of State

S.B. 1280