

REFERENCE TITLE: sale of products; committed youths

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

SB 1445

Introduced by
Senators Huppenthal, Gray L, Rios: Soltero

AN ACT

AMENDING SECTIONS 41-2752, 41-2804, 41-2822 AND 41-2826, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 26, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 41-2827 AND 41-2828; RELATING TO THE DEPARTMENT OF JUVENILE CORRECTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 41-2752, Arizona Revised Statutes, is amended to
3 read:

4 41-2752. State competition with private enterprise prohibited;
5 exceptions

6 A. A state agency shall not engage in the manufacturing, processing,
7 sale, offering for sale, rental, leasing, delivery, dispensing, distributing
8 or advertising of goods or services to the public that are also offered by
9 private enterprise unless specifically authorized by law other than
10 administrative law and executive orders.

11 B. A state agency shall not offer or provide goods or services to the
12 public for or through another state agency or a local agency, including by
13 intergovernmental or interagency agreement, in violation of this section or
14 section 41-2753.

15 C. The restrictions on activities that compete with private enterprise
16 contained in this section do not apply to:

17 1. The development, operation and management of state parks,
18 historical monuments and hiking or equestrian trails.

19 2. Correctional industries established and operated by the state
20 department of corrections ~~providing~~ IF the prices charged for products sold
21 by the correctional industries are not less than the actual cost of producing
22 and marketing the product plus a reasonable allowance for overhead and
23 administrative costs.

24 3. The Arizona office of tourism.

25 4. The Arizona highways magazine, operated by the department of
26 transportation.

27 5. Printing and distributing information to the public if the agency
28 is otherwise authorized to do so, and printing or copying public records or
29 other material relating to the public agency's public business and recovering
30 through fees and charges the costs of such printing, copying and ~~distribution~~
31 ~~DISTRIBUTING~~.

32 6. The department of public safety.

33 7. The construction, maintenance and operation of state transportation
34 facilities.

35 8. The development, distribution, maintenance, support, licensing,
36 leasing or sale of computer software by the department of transportation.

37 9. Agreements executed by the Arizona health care cost containment
38 system administration with other states to design, develop, install and
39 operate information technology systems and related services or other
40 administrative services pursuant to section 36-2925.

41 10. Agreements executed by the department of economic security with
42 other states to design, develop, install and operate support collection
43 technology systems and related services. The department shall deposit,
44 pursuant to sections 35-146 and 35-147, monies received pursuant to this

1 paragraph in the public assistance collections fund established by section
2 46-295.

3 11. EDUCATIONAL, VOCATIONAL, TREATMENT, TRAINING OR WORK PROGRAMS OF
4 THE DEPARTMENT OF JUVENILE CORRECTIONS AND contracts between the department
5 of juvenile corrections and this state, a political subdivision of this state
6 or a private entity in order to provide employment or vocational educational
7 experience.

8 12. The aflatoxin control technologies of the cotton research and
9 protection council.

10 13. The lease or sublease of lands or buildings by the department of
11 economic security pursuant to section 41-1958.

12 D. The restrictions on activities that compete with private enterprise
13 contained in subsection A of this section do not apply to community colleges
14 and universities under the jurisdiction of a governing board.

15 Sec. 2. Section 41-2804, Arizona Revised Statutes, is amended to read:
16 41-2804. Duties and powers of director

17 A. The director shall:

18 1. Be responsible for the overall operations and policies of the
19 department.

20 2. Maintain and administer all secure care facilities and programs
21 within the department required and established for the custody, control,
22 treatment, education and rehabilitation of all ~~youth~~ YOUTHS committed to the
23 department.

24 3. Be responsible for the administration and execution of all
25 conditional liberty services for ~~youth~~ YOUTHS released pursuant to rules
26 adopted by the director in accordance with law.

27 4. Be responsible for the development of policies and programs which
28 shall be recommended to the governor and the legislature for the purpose of
29 improving the youth rehabilitative and treatment programs of this state.

30 5. Develop and establish a uniform statewide method of reporting
31 statistics as related to this chapter.

32 6. Employ deputy directors and other key personnel based on
33 qualifications prescribed by the director which require education and
34 practical experience.

35 B. The director may:

36 1. Adopt rules to implement the purposes of the department and the
37 duties and powers of the director.

38 2. Take any administrative action to improve the efficiency of the
39 department, including the following:

40 (a) Create new divisions or units or consolidate divisions or units.

41 (b) Transfer employees between the various divisions and units of the
42 department.

43 (c) Shift duties between divisions or units.

44 (d) Delegate authority to appoint, hire, terminate and discipline all
45 personnel of the department, including specialists and consultants.

1 (e) Transfer committed ~~youth~~ YOUTHS between secure care facilities.

2 (f) Transfer ~~youth~~ YOUTHS who have been committed to the department or
3 to any facility under its jurisdiction between the various secure care
4 facilities for youths, foster homes and public and private agencies on
5 notification to the committing court.

6 (g) Appoint certain employees of the department to peace officer
7 status for purposes of guarding, transporting or pursuing persons under the
8 jurisdiction of the department and appoint certain employees of the
9 department to peace officer status for purposes of investigating or arresting
10 persons who commit or attempt to commit offenses directly relating to the
11 operations of the department.

12 3. Contract with other agencies or institutions in furtherance of any
13 department program.

14 4. ADOPT GUIDELINES TO DISPOSE OF PROPERTY THAT IS NO LONGER NEEDED OR
15 NECESSARY FOR USE IN A DEPARTMENT EDUCATIONAL, VOCATIONAL, TREATMENT,
16 TRAINING OR WORK PROGRAM. THE DISPOSITION OF PROPERTY IS EXEMPT FROM CHAPTER
17 23, ARTICLE 8 OF THIS TITLE. ANY MONIES DERIVED FROM THE DISPOSITION OF THE
18 PROPERTY SHALL BE DEPOSITED, PURSUANT TO SECTIONS 35-146 AND 35-147, IN THE
19 DEPARTMENT OF JUVENILE CORRECTIONS CAREER TECHNICAL EDUCATION FUND
20 ESTABLISHED BY SECTION 41-2828.

21 5. ACCEPT AND SPEND PRIVATE GRANTS OF MONIES TO EFFECTUATE THE
22 PURPOSES OF SECTION 41-2827. MONIES COLLECTED PURSUANT TO THIS PARAGRAPH
23 SHALL BE DEPOSITED AND ADMINISTERED PURSUANT TO SECTION 41-2828.

24 C. Peace officers of the department shall not preempt the authority
25 and jurisdiction of established agencies of this state and political
26 subdivisions of this state. Such officers shall notify agencies of this
27 state and political subdivisions of this state before conducting an
28 investigation within the jurisdiction of the agency and before making an
29 arrest within the jurisdiction of the agency and shall ask, except in an
30 emergency, if the agency wishes to participate, perform the investigation or
31 arrest the person to be arrested before proceeding. Personnel appointed as
32 peace officers by the director shall have the minimum qualifications
33 established for peace officers pursuant to section 41-1822. Personnel
34 appointed by the director pursuant to subsection B, paragraph 2, subdivision
35 (g) of this section are not eligible to participate in funding provided by
36 the peace officers' training fund established by section 41-1825 or in the
37 public safety personnel retirement system except as otherwise provided in
38 title 38, chapter 5, article 4.

39 Sec. 3. Section 41-2822, Arizona Revised Statutes, is amended to read:
40 41-2822. Committed youth work program

41 A. The director shall establish a committed youth work program for
42 ~~youth~~ YOUTHS in secure care facilities and on conditional liberty to ensure
43 that:

1 1. All committed ~~youth~~ YOUTHS in a secure care facility receive work
2 assignments commensurate and compatible with the condition and limitations of
3 the youth's physical and mental health.

4 2. Committed ~~youth~~ YOUTHS on conditional liberty, as a condition of
5 liberty, may receive work assignments. All work assignments shall be
6 commensurate and compatible with the condition and limitations of the youth's
7 physical and mental health.

8 3. No committed youth in a secure care facility or on conditional
9 liberty participates in a work assignment that threatens the safety and
10 security of the public, a secure care facility or the committed youth.

11 B. A committed youth may be exempted from the work requirement if the
12 staff determines that the exemption is necessary for the health, safety or
13 treatment of the youth. The director or the director's authorized designee
14 shall review and approve each exemption of a committed youth from engaging in
15 the work requirements of this section.

16 C. Notwithstanding title 23, chapter 2, article 3 relating to youth
17 employment, each youth who is under commitment to the department, who is
18 confined in a secure care facility under the department's jurisdiction and
19 who is not regularly attending and making satisfactory progress in
20 educational classes shall engage in work for at least forty hours a week
21 unless exempted pursuant to subsection B of this section.

22 D. Each committed youth who is engaged in productive work while under
23 the jurisdiction of the department may receive such compensation for the
24 youth's work as the director ~~shall determine~~ DETERMINES. The compensation
25 shall be in accordance with a graduated schedule based on quality and
26 quantity of work performed and skill required for its performance.

27 E. The compensation of committed ~~youth~~ YOUTHS shall be paid directly
28 by an outside entity or out of monies received pursuant to section 8-243 or
29 monies appropriated by the legislature **OR BY THE DEPARTMENT WITH MONIES FROM**
30 **THE DEPARTMENT OF JUVENILE CORRECTIONS RESTITUTION FUND ESTABLISHED BY**
31 **SECTION 41-2826.**

32 F. A minimum of two-thirds of any compensation earned pursuant to this
33 section by a committed youth in a secure care facility shall be paid to the
34 clerk of the superior court to satisfy any juvenile court restitution order
35 made pursuant to section 8-344. While a youth is on conditional liberty the
36 department shall determine the amount of wages to be credited to restitution.

37 G. If a committed youth in a secure care facility is not subject to a
38 restitution order but is subject to a monetary assessment by the court
39 pursuant to section 8-341, subsection G or H, a minimum of two-thirds of any
40 compensation earned shall be paid to the clerk of the superior court to
41 satisfy the monetary assessment. While a youth is on conditional liberty the
42 department shall determine the amount of wages to be credited to a monetary
43 assessment.

44 H. If a committed youth in a secure care facility is not subject to a
45 restitution order or a monetary assessment, two-thirds of any compensation

1 earned pursuant to this section shall be used to defer the costs of room and
2 board for maintaining the committed youth at the secure care facility.

3 I. The department shall require the payment of court ordered
4 restitution, monetary reimbursements or assessments as a term of conditional
5 liberty.

6 J. With the approval of the juvenile court and the victim, community
7 restitution hours may be substituted for monetary restitution or monetary
8 assessments at a rate deemed reasonable by the department.

9 K. The department may enter into contracts with this state, any
10 political subdivision of this state or private entities in order to provide
11 employment or vocational educational experience. Any revenues the department
12 receives from the contracts shall be deposited, pursuant to sections 35-146
13 and 35-147, in the department of juvenile corrections ~~restitution fund~~
14 ~~pursuant to section 41-2826~~ CAREER TECHNICAL EDUCATION FUND ESTABLISHED BY
15 SECTION 41-2828 and shall be used in accordance with the purposes of the
16 fund.

17 Sec. 4. Section 41-2826, Arizona Revised Statutes, is amended to read:
18 41-2826. Department of juvenile corrections restitution fund;
19 report

20 A. The department of juvenile corrections restitution fund is
21 established for the payment of restitution and monetary assessments by youths
22 who are ordered to pay restitution or monetary assessments and who are
23 financially unable to pay or who are otherwise unable to be employed to earn
24 money to pay restitution or monetary assessments and who are working in the
25 committed youth work program prescribed by section 41-2822 or the community
26 work program established by section 41-2825. The fund consists of federal,
27 state and local appropriations, MONIES DISTRIBUTED TO THE FUND PURSUANT TO
28 SECTION 41-2828 and grants, gifts, devises and donations from any public or
29 private source. The fund shall be used to pay a youth for the youth's work
30 in the committed youth work program prescribed by section 41-2822 and to
31 provide monies for the community work program established by section 41-2825.

32 B. The director may direct the payment of monies from the fund to the
33 victim or the court for community restitution activities the youth does to
34 pay restitution or monetary assessments that were ordered by the juvenile
35 court or that the youth agreed to pay as part of a community work program
36 administered by the department. If a youth performs community restitution
37 pursuant to this subsection, the entity providing the work shall supervise
38 the youth's work. The youth shall be credited for each hour worked at an
39 hourly rate set by the director.

40 C. As monies are available, the department shall pay from the fund
41 ~~youth~~ YOUTHS who perform work or community restitution activities for
42 restitution and monetary assessments purposes.

43 D. The department may expend, for the payment of administrative costs
44 and expenses, an amount not greater than ten per cent of the fund balance as
45 of the end of the preceding fiscal year.

1 E. Monies in the fund are continuously appropriated and are exempt
2 from the provisions of section 35-190 relating to lapsing of appropriations.

3 F. On or before August 15, ~~2002,~~ and OF each year ~~thereafter~~, the
4 department shall submit a report to the joint legislative budget committee
5 detailing all revenues received by and expenditures made from the fund during
6 the most recent fiscal year.

7 Sec. 5. Title 41, chapter 26, article 1, Arizona Revised Statutes, is
8 amended by adding sections 41-2827 and 41-2828, to read:

9 41-2827. Products produced by committed youths; materials;
10 disaffirmance; contracts

11 A. PRODUCTS THAT ARE PRODUCED BY COMMITTED YOUTHS PURSUANT TO AN
12 EDUCATIONAL, VOCATIONAL, TREATMENT, TRAINING OR WORK PROGRAM ARE THE PROPERTY
13 OF THE DEPARTMENT AND MAY BE MARKETED TO THE PUBLIC BY THE DEPARTMENT. ALL
14 PROCEEDS FROM THE SALE OF PRODUCTS THAT ARE PRODUCED BY COMMITTED YOUTHS
15 SHALL BE DEPOSITED, PURSUANT TO SECTIONS 35-146 AND 35-147, IN THE DEPARTMENT
16 OF JUVENILE CORRECTIONS CAREER TECHNICAL EDUCATION FUND ESTABLISHED BY
17 SECTION 41-2828.

18 B. THE DEPARTMENT MAY PURCHASE RAW MATERIALS, COMPONENTS AND SUPPLIES
19 FOR USE IN THE MANUFACTURE OF PRODUCTS IN A DEPARTMENT EDUCATIONAL,
20 VOCATIONAL, TREATMENT, TRAINING OR WORK PROGRAM.

21 C. THE DEPARTMENT SHALL FIX AND DETERMINE THE PRICES AT WHICH ALL
22 ARTICLES, SERVICES OR PRODUCTS THAT ARE MANUFACTURED OR PRODUCED SHALL BE
23 FURNISHED OR SOLD. ALL ARTICLES OR PRODUCTS THAT ARE MANUFACTURED OR
24 PRODUCED OR SERVICES THAT ARE PROVIDED THROUGH DEPARTMENT EDUCATIONAL,
25 VOCATIONAL, TREATMENT, TRAINING OR WORK PROGRAMS SHALL BE PRICED AT NOT LESS
26 THAN THE ACTUAL COST OF PRODUCING AND MARKETING THE PRODUCT PLUS A REASONABLE
27 AMOUNT FOR OVERHEAD AND ADMINISTRATIVE COSTS AND A REASONABLE PROFIT TO
28 PROVIDE FISCAL RESOURCES FOR THE RESEARCH AND DEVELOPMENT OF PROGRAMS FOR
29 COMMITTED YOUTHS.

30 D. SALES OF PRODUCTS THAT ARE PRODUCED BY COMMITTED YOUTHS PURSUANT TO
31 A DEPARTMENT EDUCATIONAL, VOCATIONAL, TREATMENT, TRAINING OR WORK PROGRAM ARE
32 NOT SUBJECT TO DISAFFIRMANCE BECAUSE OF MINORITY.

33 E. THE DIRECTOR OR THE DIRECTOR'S DESIGNEE MAY CONTRACT WITH ANY STATE
34 AGENCY, POLITICAL SUBDIVISION OR PRIVATE PERSON, FIRM, CORPORATION OR
35 ASSOCIATION TO PROVIDE SERVICES OR PRODUCTS PRODUCED BY COMMITTED YOUTHS
36 PURSUANT TO AN EDUCATIONAL, VOCATIONAL, TREATMENT, TRAINING OR WORK PROGRAM.

37 F. ALL MONIES DERIVED FROM CONTRACT SERVICES PROVIDED PURSUANT TO
38 SUBSECTION E OF THIS SECTION SHALL BE DEPOSITED, PURSUANT TO SECTIONS 35-146
39 AND 35-147, IN THE DEPARTMENT OF JUVENILE CORRECTIONS CAREER TECHNICAL
40 EDUCATION FUND ESTABLISHED BY SECTION 41-2828.

41 41-2828. Department of juvenile corrections career technical
42 education fund; definitions

43 A. THE DEPARTMENT OF JUVENILE CORRECTIONS CAREER TECHNICAL EDUCATION
44 FUND IS ESTABLISHED FOR THE PURPOSE OF PAYING EXPENSES THAT ARE REQUIRED FOR

1 ANY EDUCATIONAL, VOCATIONAL, TREATMENT, TRAINING OR WORK PROGRAM ESTABLISHED
2 BY THE DEPARTMENT, INCLUDING:
3 1. THE PURCHASE OF RAW MATERIALS, COMPONENTS AND SUPPLIES THAT ARE
4 USED FOR THE PRODUCTION OF FOOD, GOODS AND OTHER ITEMS THAT ARE PRODUCED AND
5 SOLD.
6 2. THE PURCHASE OR RENTAL OF EQUIPMENT.
7 3. THE CONSTRUCTION OR RECONSTRUCTION OF FACILITIES.
8 4. OPERATING EXPENSES AND IN-STATE TRAVEL.
9 5. THE INSTRUCTION OF COMMITTED YOUTHS IN THE PROGRAM.
10 6. THE MARKETING, TRANSPORTATION AND SALE OF FOOD, GOODS AND OTHER
11 ITEMS THAT ARE PRODUCED AND SOLD.
12 B. MONIES RECEIVED FOR OR DERIVED FROM ANY DEPARTMENT EDUCATIONAL,
13 VOCATIONAL, TREATMENT, TRAINING OR WORK PROGRAM, INCLUDING MONIES FROM THE
14 SALE OF OBSOLETE OR UNNEEDED MATERIAL, SUPPLIES, EQUIPMENT OR PROPERTY, SHALL
15 BE DEPOSITED, PURSUANT TO SECTIONS 35-146 AND 35-147, IN THE CAREER TECHNICAL
16 EDUCATION FUND. THE FUND IS EXEMPT FROM THE PROVISIONS OF SECTION 35-190
17 RELATING TO LAPSING OF APPROPRIATIONS.
18 C. ON NOTICE FROM THE DIRECTOR, THE STATE TREASURER SHALL INVEST AND
19 DIVEST MONIES IN THE FUND AS PROVIDED BY SECTION 35-313, AND MONIES EARNED
20 FROM INVESTMENT SHALL BE CREDITED TO THE FUND.
21 D. MONIES IN THE FUND ARE CONTINUOUSLY APPROPRIATED AND THE DIRECTOR
22 MAY DEPOSIT MONIES FROM THE FUND IN THE DEPARTMENT OF JUVENILE CORRECTIONS
23 RESTITUTION FUND ESTABLISHED BY SECTION 41-2826.
24 E. FOR THE PURPOSES OF THIS SECTION:
25 1. "COMPONENTS" MEANS THE PARTS, SUBASSEMBLIES AND PACKAGING MATERIALS
26 THAT WILL BECOME PART OF A FINAL PRODUCT OR SERVICE.
27 2. "RAW MATERIALS" MEANS THE MATERIALS THAT ARE CONVERTED OR COMBINED
28 DURING THE MANUFACTURING PROCESS.