

State of Arizona
House of Representatives
Fiftieth Legislature
Second Regular Session
2012

HOUSE BILL 2626

AN ACT

AMENDING SECTIONS 15-802, 15-1182, 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 15-802, Arizona Revised Statutes, is amended to
3 read:

4 15-802. School instruction; exceptions; violations;
5 classification; definitions

6 A. Every child between the ages of six and sixteen years shall attend
7 a school and shall be provided instruction in at least the subjects of
8 reading, grammar, mathematics, social studies and science. The person who
9 has custody of the child shall choose a public, private or charter school or
10 a homeschool as defined in this section to provide instruction **OR SHALL SIGN**
11 **A CONTRACT TO PARTICIPATE IN AN ARIZONA EMPOWERMENT SCHOLARSHIP ACCOUNT**
12 **PURSUANT TO SECTION 15-2402.**

13 B. The parent or person who has custody shall do the following:

14 1. If the child will attend a public, private or charter school,
15 enroll the child in and ensure that the child attends a public, private or
16 charter school for the full time school is in session. In accordance with
17 guidelines adopted by the department of education, school districts and
18 charter schools shall require and maintain verifiable documentation of
19 residency in this state for pupils who enroll in the school district or
20 charter school. If a child attends a school that is operated on a year-round
21 basis, the child shall regularly attend during school sessions that total not
22 less than one hundred eighty school days or two hundred school days, as
23 applicable, or the equivalent as approved by the superintendent of public
24 instruction.

25 2. If the child will attend a private school or homeschool, file an
26 affidavit of intent with the county school superintendent stating that the
27 child is attending a regularly organized private school or is being provided
28 with instruction in a homeschool. The affidavit of intent shall include:

29 (a) The child's name.

30 (b) The child's date of birth.

31 (c) The current address of the school the child is attending.

32 (d) The names, telephone numbers and addresses of the persons who
33 currently have custody of the child.

34 3. If the child will attend homeschool, the child has not reached
35 eight years of age by September 1 of the school year and the person who has
36 custody of the child does not desire to begin home instruction until the
37 child has reached eight years of age, file an affidavit of intent pursuant to
38 paragraph 2 of this subsection stating that the person who has custody of the
39 child does not desire to begin homeschool instruction.

40 C. An affidavit of intent shall be filed within thirty days from the
41 time the child begins to attend a private school or homeschool and is not
42 required thereafter unless the private school or the homeschool instruction
43 is terminated and then resumed. The person who has custody of the child
44 shall notify the county school superintendent within thirty days of the
45 termination that the child is no longer being instructed at a private school

1 or a homeschool. If the private school or homeschool instruction is resumed,
2 the person who has custody of the child shall file another affidavit of
3 intent with the county school superintendent within thirty days.

4 D. A person is excused from the duties prescribed by subsection A or B
5 of this section if any of the following is shown to the satisfaction of the
6 school principal or the school principal's designee:

7 1. The child is in such physical or mental condition that instruction
8 is inexpedient or impracticable.

9 2. The child has completed the high school course of study necessary
10 for completion of grade ten as prescribed by the state board of education.

11 3. The child has presented reasons for nonattendance at a public
12 school that are satisfactory to the school principal or the school
13 principal's designee. For the purposes of this paragraph, the principal's
14 designee may be the school district governing board.

15 4. The child is over fourteen years of age and is employed, with the
16 consent of the person who has custody of him, at some lawful wage earning
17 occupation.

18 5. The child is enrolled in a work training, career education, career
19 and technical education, vocational education or manual training program that
20 meets the educational standards established and approved by the department of
21 education.

22 6. The child was either:

23 (a) Suspended and not directed to participate in an alternative
24 education program.

25 (b) Expelled from a public school as provided in article 3 of this
26 chapter.

27 7. The child is enrolled in an education program provided by a state
28 educational or other institution.

29 E. Unless otherwise exempted in this section or section 15-803, a
30 parent of a child between six and sixteen years of age or a person who has
31 custody of a child, who does not provide instruction in a homeschool and who
32 fails to enroll or fails to ensure that the child attends a public, private
33 or charter school pursuant to this section **OR FAILS TO SIGN A CONTRACT TO**
34 **PARTICIPATE IN AN EMPOWERMENT SCHOLARSHIP ACCOUNT PURSUANT TO SECTION 15-2402**
35 is guilty of a class 3 misdemeanor. A parent who fails to comply with the
36 duty to file an affidavit of intent to provide instruction in a homeschool is
37 guilty of a petty offense.

38 **F. IF A CHILD WILL BE EDUCATED PURSUANT TO AN EMPOWERMENT SCHOLARSHIP**
39 **ACCOUNT PURSUANT TO SECTION 15-2402, THE DEPARTMENT OF EDUCATION SHALL**
40 **PROVIDE A COPY OF THE CONTRACT TO PARTICIPATE IN THE EMPOWERMENT SCHOLARSHIP**
41 **ACCOUNT TO THE SCHOOL SUPERINTENDENT OF THE COUNTY WHERE THE PUPIL RESIDES.**

42 ~~F.~~ G. For the purposes of this section:

43 1. **"EDUCATED PURSUANT TO AN EMPOWERMENT SCHOLARSHIP ACCOUNT" MEANS A**
44 **CHILD WHOSE PARENT HAS SIGNED A CONTRACT PURSUANT TO SECTION 15-2402 TO**
45 **EDUCATE THE CHILD OUTSIDE OF ANY SCHOOL DISTRICT OR CHARTER SCHOOL AND IN**

1 WHICH THE PARENT MAY, BUT IS NOT REQUIRED, TO ENROLL THE CHILD IN A PRIVATE
2 SCHOOL OR TO EDUCATE THE CHILD THROUGH ANY OF THE METHODS SPECIFIED IN
3 SECTION 15-2402.

4 ~~1.~~ 2. "Homeschool" means a nonpublic school conducted primarily by
5 the parent, guardian or other person who has custody of the child or
6 nonpublic instruction provided in the child's home.

7 ~~2.~~ 3. "Private school" means a nonpublic institution, other than the
8 child's home, where academic instruction is provided for at least the same
9 number of days and hours each year as a public school.

10 Sec. 2. Section 15-1182, Arizona Revised Statutes, is amended to read:

11 15-1182. Special education fund; administration

12 A. There is established a special education fund, which shall consist
13 of legislative appropriations made to the fund for purposes of this section
14 and section 15-1202 ~~and chapter 19, article 1 of this title.~~

15 B. The fund shall be administered by the superintendent of public
16 instruction for the purposes provided in this article and article 7 of this
17 chapter ~~and chapter 19, article 1 of this title.~~

18 C. Each fiscal year the state board of education shall include in its
19 budget request for assistance to schools a separate line item for the fund.

20 D. The fund shall provide monies for the education of a child who has
21 been placed in a residential facility by a state placing agency or who
22 requires a residential special education placement as defined in section
23 15-761 ~~or for deposit into an Arizona empowerment scholarship account~~
24 ~~pursuant to section 15-2402.~~

25 E. If a child has been placed in a residential facility by a state
26 placing agency, the fund shall provide monies for the following types of
27 vouchers:

28 1. Initial residential education vouchers to fund the educational
29 costs for any child, whether or not eligible for special education. This
30 paragraph applies to a child who has been placed in a residential facility
31 and who has either not received a comprehensive education evaluation as
32 provided in section 15-766, who has previously received such an evaluation
33 and was determined to be ineligible for special education services or who is
34 eligible for special education and for whom necessary procedures for changing
35 the child's educational placement must be completed. This voucher expires on
36 the expiration of sixty calendar days or completion of the educational
37 evaluation or review of special education placement, whichever occurs first.

38 2. Continuing residential education vouchers that fund the educational
39 costs for any child, whether or not eligible for special education, who
40 requires placement in a residential facility after the expiration of the
41 initial education voucher and who is not eligible for a residential special
42 education voucher.

43 F. When a school district makes a residential special education
44 placement, the fund shall provide monies to fund the residential special
45 education placement.

1 G. Monies in the fund are exempt from the provisions of section 35-190
2 relating to lapsing of appropriations. Any monies left unexpended may be
3 distributed to school districts by the department of education for the
4 following purposes:

5 1. To provide educational counseling, training and support services to
6 a child with a disability in order to maintain the child's educational
7 placement in the least restrictive environment.

8 2. To provide educational transition assistance to children who return
9 to their home after placement in a residential facility.

10 3. To train personnel for and develop and implement model programs for
11 use by school districts to serve children with emotional disabilities.

12 H. The total amount of state monies that may be spent in any fiscal
13 year by the superintendent of public instruction for the purposes of this
14 article ~~and chapter 19, article 1 of this title~~ shall not exceed the amount
15 appropriated or authorized by section 35-173 for that purpose. This article
16 shall not be construed to impose a duty on an officer, agent or employee of
17 this state to discharge a responsibility or to create any right in a person
18 or group if the discharge or right would require an expenditure of state
19 monies in excess of the expenditure authorized by legislative appropriation
20 for that specific purpose.

21 Sec. 3. Section 15-2401, Arizona Revised Statutes, is amended to read:

22 15-2401. Definitions

23 In this chapter, unless the context otherwise requires:

24 1. "CURRICULUM" MEANS A COMPLETE COURSE OF STUDY FOR A PARTICULAR
25 CONTENT AREA OR GRADE LEVEL, INCLUDING ANY SUPPLEMENTAL MATERIALS REQUIRED BY
26 THE CURRICULUM.

27 ~~1-~~ 2. "Department" means the department of education.

28 ~~2-~~ 3. "Eligible postsecondary institution" means a community college
29 as defined in section 15-1401, a university under the jurisdiction of the
30 Arizona board of regents or an accredited private postsecondary institution.

31 ~~3-~~ 4. "Parent" means a resident of this state who is the parent or
32 legal guardian of a qualified student.

33 ~~4-~~ 5. "Qualified school" means a nongovernmental primary or secondary
34 school or a preschool for handicapped students that is located in this state
35 and that does not discriminate on the basis of race, color or national
36 origin.

37 ~~5-~~ 6. "Qualified student" means a resident of this state who:

38 (a) Is ~~either~~ ANY OF THE FOLLOWING:

39 (i) Identified as having a disability under section 504 of the
40 rehabilitation act OF 1973 (29 United States Code section 794). ~~—~~

41 (ii) Identified by a school district as a child with a disability as
42 defined in section 15-761. ~~or~~

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

1 (iv) ATTENDING A SCHOOL OR SCHOOL DISTRICT THAT HAS BEEN ASSIGNED A
2 LETTER GRADE OF D OR F PURSUANT TO SECTION 15-241.

3 (v) A PREVIOUS RECIPIENT OF A SCHOLARSHIP ISSUED PURSUANT TO SECTION
4 15-891.

5 (vi) A CHILD OF A PARENT WHO IS A MEMBER OF THE ARMED FORCES OF THE
6 UNITED STATES.

7 (vii) A CHILD WITH A GUARDIAN WHO IS A MEMBER OF THE ARMED FORCES OF
8 THE UNITED STATES.

9 (viii) A CHILD WHO HAS BEEN IDENTIFIED AS A GIFTED PUPIL AS DEFINED IN
10 SECTION 15-779.

11 (b) And who did any of the following:

12 ~~(a)~~ (i) Attended a governmental primary or secondary school as a
13 full-time student as defined in section 15-901 for at least the first one
14 hundred days of the prior fiscal year and who transferred from a governmental
15 primary or secondary school ~~to a qualified school~~ UNDER A CONTRACT TO
16 PARTICIPATE IN AN EMPOWERMENT SCHOLARSHIP ACCOUNT.

17 ~~(b)~~ (ii) Participated in the empowerment scholarship account program
18 in the previous year and whose parent renews the agreement pursuant to
19 section 15-2402, subsection ~~B~~ D.

20 ~~(c)~~ (iii) ~~Received~~ AT ONE TIME ATTENDED A PUBLIC SCHOOL AND WAS
21 DEEMED ELIGIBLE BY A SCHOOL TUITION ORGANIZATION FOR a scholarship under
22 section 43-1505 and who continues to attend a qualified school.

23 ~~6.~~ 7. "Treasurer" means the office of the state treasurer.

24 Sec. 4. Section 15-2402, Arizona Revised Statutes, is amended to read:
25 15-2402. Arizona empowerment scholarship accounts

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

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

31 1. Provide an education for the qualified student in at least the
32 subjects of reading, grammar, mathematics, social studies and science.

33 2. Not enroll the qualified student in a school district or charter
34 school and release the school district from all obligations to educate the
35 qualified student. THIS PARAGRAPH DOES NOT RELIEVE THE SCHOOL DISTRICT OR
36 CHARTER SCHOOL THAT THE QUALIFIED STUDENT PREVIOUSLY ATTENDED FROM THE
37 OBLIGATION TO CONDUCT AN EVALUATION PURSUANT TO SECTION 15-766.

38 3. Not accept a scholarship from a school tuition organization
39 pursuant to title 43 CONCURRENTLY WITH AN EMPOWERMENT SCHOLARSHIP ACCOUNT for
40 the qualified student in the same year a parent signs the agreement pursuant
41 to ~~subsection B of~~ this section.

42 4. Use the money deposited in the qualified student's Arizona
43 empowerment scholarship account only for the following expenses of the
44 qualified student:

- 1 (a) Tuition or fees at a qualified school.
2 (b) Textbooks required by a qualified school.
3 (c) Educational therapies or services for the qualified student from a
4 licensed or accredited practitioner or provider, INCLUDING LICENSED OR
5 ACCREDITED PARAPROFESSIONALS OR EDUCATIONAL AIDES.
6 (d) Tutoring services provided by a tutor accredited by a state,
7 regional or national accrediting organization.
8 (e) Curriculum.
9 (f) Tuition or fees for a nonpublic online learning program.
10 (g) Fees for a nationally standardized norm-referenced achievement
11 test, advanced placement examinations or any exams related to college or
12 university admission.
13 (h) Contributions to a qualified tuition program established pursuant
14 to ~~11~~ 26 United States Code section 529 FOR THE BENEFIT OF THE QUALIFIED
15 STUDENT.
16 (i) Tuition or fees at an eligible postsecondary institution.
17 (j) Textbooks required by an eligible postsecondary institution.
18 (k) Fees for management of the empowerment scholarship account by
19 firms selected by the ~~department~~ TREASURER.
20 (1) SERVICES PROVIDED BY A PUBLIC SCHOOL, INCLUDING INDIVIDUAL CLASSES
21 AND EXTRACURRICULAR PROGRAMS.
22 5. NOT FILE AN AFFIDAVIT OF INTENT TO HOMESCHOOL PURSUANT TO SECTION
23 15-802, SUBSECTION B, PARAGRAPH 2 OR 3.
24 6. NOT USE MONIES DEPOSITED IN THE QUALIFIED STUDENT'S ACCOUNT FOR ANY
25 OF THE FOLLOWING:
26 (a) COMPUTER HARDWARE OR OTHER TECHNOLOGICAL DEVICES.
27 (b) TRANSPORTATION TO AND FROM SCHOOL OR TO AND FROM ANOTHER QUALIFIED
28 SERVICE PROVIDER.
29 (c) CONSUMABLE EDUCATIONAL SUPPLIES, INCLUDING PAPER, PENS OR MARKERS.
30 C. In exchange for the parent's agreement pursuant to subsection B of
31 this section, the department shall transfer from the ~~special education fund~~
32 ~~pursuant to section 15-1182~~ MONIES THAT WOULD OTHERWISE BE ALLOCATED TO A
33 RECIPIENT'S PRIOR SCHOOL DISTRICT to the treasurer for deposit into an
34 Arizona empowerment scholarship account an amount that is equivalent to
35 ninety per cent of the base support level prescribed in section 15-943 for
36 that particular student. THE DEPARTMENT MAY RETAIN UP TO FIVE PER CENT OF
37 THE AMOUNT THAT WOULD OTHERWISE BE ALLOCATED TO A RECIPIENT'S PRIOR SCHOOL
38 DISTRICT IN ORDER TO ADMINISTER THE EMPOWERMENT ACCOUNT SCHOLARSHIP PROGRAM.
39 D. A parent must renew the qualified student's empowerment scholarship
40 account on an annual basis. NOTWITHSTANDING ANY CHANGES TO THE STUDENT'S
41 MULTIDISCIPLINARY EVALUATION TEAM OR INDIVIDUALIZED EDUCATION PLAN, A STUDENT
42 WHO HAS PREVIOUSLY QUALIFIED FOR AN EMPOWERMENT SCHOLARSHIP ACCOUNT SHALL
43 REMAIN ELIGIBLE TO APPLY FOR RENEWAL UNTIL THE STUDENT FINISHES HIGH SCHOOL.
44 E. A signed agreement under this section constitutes school attendance
45 required by section 15-802.

1 F. A qualified school or a provider of services purchased pursuant to
2 subsection B, paragraph 4 of this section may not share, refund or rebate any
3 Arizona empowerment scholarship account monies with the parent or qualified
4 ~~child~~ STUDENT in any manner.

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

10 H. Monies received pursuant to this article ~~does~~ DO not constitute
11 taxable income to the parent of the ~~qualifying~~ QUALIFIED student.

12 Sec. 5. Section 15-2403, Arizona Revised Statutes, is amended to read:
13 15-2403. Empowerment scholarship accounts; administration;
14 audit; rules

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

18 B. The department shall conduct or contract for annual audits of a
19 random sample of empowerment scholarship accounts to ensure compliance with
20 section 15-2402, subsection B, paragraph 4. The department may also conduct
21 or contract for audits of empowerment scholarship accounts as needed to
22 ensure compliance with section 15-2402, subsection B, paragraph 4.

23 C. The department may remove any parent or qualified student from
24 eligibility for an Arizona empowerment scholarship account and shall notify
25 the treasurer. A parent may appeal the department's decision pursuant to
26 title 41, chapter 6, article 10.

27 D. The department may refer cases of substantial misuse of monies to
28 the attorney general for investigation if the department obtains evidence of
29 fraudulent use of an account.

30 E. The treasurer may deduct up to three per cent of the amount of
31 student state aid from each empowerment scholarship account for the costs of
32 administering empowerment scholarship accounts under this chapter, including
33 costs incurred by the department.

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

37 G. THE DEPARTMENT SHALL DETERMINE A PERIOD THAT IS BETWEEN JULY 1 AND
38 MARCH 1 OF EACH YEAR DURING WHICH IT WILL ACCEPT APPLICATIONS FOR THE
39 FOLLOWING FISCAL YEAR. ON OR BEFORE MAY 30 OF EACH YEAR, THE DEPARTMENT
40 SHALL FURNISH TO THE JOINT LEGISLATIVE BUDGET COMMITTEE AN ESTIMATE OF THE
41 AMOUNT REQUIRED TO FUND EMPOWERMENT SCHOLARSHIP ACCOUNTS FOR THE FOLLOWING
42 FISCAL YEAR. THE DEPARTMENT SHALL INCLUDE IN ITS BUDGET REQUEST FOR THE
43 FOLLOWING FISCAL YEAR THE AMOUNT SPECIFIED IN SECTION 15-2402, SUBSECTION C
44 FOR EACH QUALIFYING STUDENT.

1 ~~G.~~ H. The department may adopt rules AND POLICIES necessary for the
2 administration of empowerment scholarship accounts.

3 Sec. 6. Effective date

4 Section 15-1182, Arizona Revised Statutes, as amended by this act, is
5 effective from and after June 30, 2013.