

State of Arizona  
Senate  
Fifty-first Legislature  
Second Regular Session  
2014

**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)

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

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

4 15-183. Charter schools; application; requirements; immunity;  
5 exemptions; renewal of application; reprisal; fee;  
6 funds

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

- 12 1. A detailed educational plan.
- 13 2. A detailed business plan.
- 14 3. A detailed operational plan.
- 15 4. Any other materials required by the sponsor.

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

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

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

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

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

45 (c) In the second consecutive year that a school district is  
46 determined to be out of compliance with the uniform system of financial

1 records, within fifteen days of the determination of noncompliance, the  
2 school district shall notify by certified mail each charter school sponsored  
3 by the school district that the school district is out of compliance with the  
4 uniform system of financial records. A charter school that receives a  
5 notification of school district noncompliance pursuant to this subdivision  
6 shall file a written sponsorship transfer application within forty-five days  
7 with the state board of education, the state board for charter schools or the  
8 school district governing board if the charter school is located within the  
9 geographic boundaries of that school district. A charter school that  
10 receives a notification of school district noncompliance may request an  
11 extension of time to file a sponsorship transfer application, and the state  
12 board of education, the state board for charter schools or a school district  
13 governing board may grant an extension of not more than an additional thirty  
14 days if good cause exists for the extension. The state board of education  
15 and the state board for charter schools shall approve a sponsorship transfer  
16 application pursuant to this paragraph.

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

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

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

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

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

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

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

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

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

44 The state board of education or the state board for charter schools may  
45 approve any charter schools transferring charters. The state board of  
46 education and the state board for charter schools shall approve any charter

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

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

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

29 5. All persons engaged in instructional work directly as a classroom,  
30 laboratory or other teacher or indirectly as a supervisory teacher, speech  
31 therapist or principal shall have a valid fingerprint clearance card that is  
32 issued pursuant to title 41, chapter 12, article 3.1, unless the person is a  
33 volunteer or guest speaker who is accompanied in the classroom by a person  
34 with a valid fingerprint clearance card. A charter school shall not employ a  
35 teacher whose certificate has been surrendered or revoked, unless the  
36 teacher's certificate has been subsequently reinstated by the state board of  
37 education. All other personnel shall be fingerprint checked pursuant to  
38 section 15-512, [OR THE CHARTER SCHOOL MAY REQUIRE THOSE PERSONNEL TO OBTAIN A](#)  
39 [FINGERPRINT CLEARANCE CARD ISSUED PURSUANT TO TITLE 41, CHAPTER 12, ARTICLE](#)  
40 [3.1](#). Before employment, the charter school shall make documented, good faith  
41 efforts to contact previous employers of a person to obtain information and  
42 recommendations that may be relevant to a person's fitness for employment as  
43 prescribed in section 15-512, subsection F. The charter school shall notify  
44 the department of public safety if the charter school or sponsor receives  
45 credible evidence that a person who possesses a valid fingerprint clearance  
46 card is arrested for or is charged with an offense listed in section

1 41-1758.03, subsection B. Charter schools may hire personnel that have not  
2 yet received a fingerprint clearance card if proof is provided of the  
3 submission of an application to the department of public safety for a  
4 fingerprint clearance card and if the charter school that is seeking to hire  
5 the applicant does all of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 6. Ensure that, except as provided in this article, it is subject to  
34 the same financial and electronic data submission requirements as a school  
35 district, including the uniform system of financial records as prescribed in  
36 chapter 2, article 4 of this title, procurement rules as prescribed in  
37 section 15-213 and audit requirements. The auditor general shall conduct a  
38 comprehensive review and revision of the uniform system of financial records  
39 to ensure that the provisions of the uniform system of financial records that  
40 relate to charter schools are in accordance with commonly accepted accounting  
41 principles used by private business. A school's charter may include  
42 exceptions to the requirements of this paragraph that are necessary as  
43 determined by the district governing board, the state board of education or  
44 the state board for charter schools. The department of education or the  
45 office of the auditor general may conduct financial, program or compliance  
46 audits.

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

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

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

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

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

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

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

31           1. At least eighteen months before the expiration of the charter, the  
32 sponsor shall notify the charter school that the charter school may apply for  
33 renewal and shall make the renewal application available to the charter  
34 school. A charter school that elects to apply for renewal shall file a  
35 complete renewal application at least fifteen months before the expiration of  
36 the charter. A sponsor shall give written notice of its intent not to renew  
37 the charter school's request for renewal to the charter school at least  
38 twelve months before the expiration of the charter. The sponsor shall make  
39 data used in making renewal decisions available to the school and the public  
40 and shall provide a public report summarizing the evidence basis for each  
41 decision. The sponsor may deny the request for renewal if, in its judgment,  
42 the charter holder has failed to do any of the following:

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

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

1 (c) Complete the obligations of the contract.

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

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

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

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

19 (c) Complete the obligations of the contract.

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

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

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

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

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

33 4. At least sixty days before the effective date of the proposed  
34 revocation, the sponsor shall give written notice to the operator of the  
35 charter school of its intent to revoke the charter. Notice of the sponsor's  
36 intent to revoke the charter shall be delivered personally to the operator of  
37 the charter school or sent by certified mail, return receipt requested, to  
38 the address of the charter school. The notice shall incorporate a statement  
39 of reasons for the proposed revocation of the charter. The sponsor shall  
40 allow the charter school at least sixty days to correct the problems  
41 associated with the reasons for the proposed revocation of the charter. The  
42 final determination of whether to revoke the charter shall be made at a  
43 public hearing called for such purpose.

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

45 K. A charter school that is sponsored by the state board of education,  
46 the state board for charter schools, a university, a community college

1 district or a group of community college districts may not be located on the  
2 property of a school district unless the district governing board grants this  
3 authority.

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

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

18 (a) Disciplinary or corrective action.

19 (b) Detail, transfer or reassignment.

20 (c) Suspension, demotion or dismissal.

21 (d) An unfavorable performance evaluation.

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

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

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

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

29 (a) Suspension or termination of the program.

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

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

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

35 M. Charter schools shall secure insurance for liability and property  
36 loss. The governing body of a charter school that is sponsored by the state  
37 board of education or the state board for charter schools may enter into an  
38 intergovernmental agreement or otherwise contract to participate in an  
39 insurance program offered by a risk retention pool established pursuant to  
40 section 11-952.01 or 41-621.01 or the charter school may secure its own  
41 insurance coverage. The pool may charge the requesting charter school  
42 reasonable fees for any services it performs in connection with the insurance  
43 program.

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

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

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

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

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

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

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

27           3. Intervention and improvement policies.

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

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

32           U. Charter schools may not locate a school on property that is less  
33 than one-fourth mile from agricultural land regulated pursuant to section  
34 3-365, except that the owner of the agricultural land may agree to comply  
35 with the buffer zone requirements of section 3-365. If the owner agrees in  
36 writing to comply with the buffer zone requirements and records the agreement  
37 in the office of the county recorder as a restrictive covenant running with  
38 the title to the land, the charter school may locate a school within the  
39 affected buffer zone. The agreement may include any stipulations regarding  
40 the charter school, including conditions for future expansion of the school  
41 and changes in the operational status of the school that will result in a  
42 breach of the agreement.

43           V. A transfer of a charter to another sponsor, a transfer of a charter  
44 school site to another sponsor or a transfer of a charter school site to a  
45 different charter shall be completed before the beginning of the fiscal year  
46 that the transfer is scheduled to become effective. An entity that sponsors

1 charter schools may accept a transferring school after the beginning of the  
2 fiscal year if the transfer is approved by the superintendent of public  
3 instruction. The superintendent of public instruction shall have the  
4 discretion to consider each transfer during the fiscal year on a case by case  
5 basis. If a charter school is sponsored by a school district that is  
6 determined to be out of compliance with this title, the uniform system of  
7 financial records or any other state or federal law, the charter school may  
8 transfer to another sponsoring entity at any time during the fiscal year. A  
9 charter holder seeking to transfer sponsors shall comply with the current  
10 charter terms regarding assignment of the charter. A charter holder  
11 transferring sponsors shall notify the current sponsor that the transfer has  
12 been approved by the new sponsor.

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

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

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

32 Z. Charter schools may enter into an intergovernmental agreement with  
33 a presiding judge of the juvenile court to implement a law related education  
34 program as defined in section 15-154. The presiding judge of the juvenile  
35 court may assign juvenile probation officers to participate in a law related  
36 education program in any charter school in the county. The cost of juvenile  
37 probation officers who participate in the program implemented pursuant to  
38 this subsection shall be funded by the charter school.

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

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

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

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

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

9 15-512. Noncertificated personnel; fingerprinting personnel;  
10 background investigations; affidavit; civil immunity;  
11 violation; classification; definition

12 A. Noncertificated personnel and personnel who are not paid employees  
13 of the school district and who are not either the parent or the guardian of a  
14 pupil who attends school in the school district but who are required or  
15 allowed to provide services directly to pupils without the supervision of a  
16 certificated employee and who are initially hired by a school district after  
17 January 1, 1990 shall be fingerprinted as a condition of employment except  
18 for personnel who are required as a condition of licensing to be  
19 fingerprinted if the license is required for employment or for personnel who  
20 were previously employed by a school district and who reestablished  
21 employment with that district within one year after the date that the  
22 employee terminated employment with the district. **A SCHOOL DISTRICT MAY  
23 REQUIRE NONCERTIFICATED PERSONNEL AND PERSONNEL WHO ARE NOT PAID EMPLOYEES OF  
24 THE SCHOOL DISTRICT AND WHO ARE NOT EITHER THE PARENT OR THE GUARDIAN OF A  
25 PUPIL WHO ATTENDS SCHOOL IN THE SCHOOL DISTRICT BUT WHO ARE REQUIRED OR  
26 ALLOWED TO PROVIDE SERVICES DIRECTLY TO PUPILS WITHOUT THE SUPERVISION OF A  
27 CERTIFICATED EMPLOYEE TO OBTAIN A FINGERPRINT CLEARANCE CARD AS A CONDITION  
28 OF EMPLOYMENT. EVEN IF THE SCHOOL DISTRICT DOES NOT REQUIRE A FINGERPRINT  
29 CLEARANCE CARD AS A CONDITION OF EMPLOYMENT, NONCERTIFICATED PERSONNEL AND  
30 PERSONNEL WHO ARE NOT PAID EMPLOYEES OF THE SCHOOL DISTRICT AND WHO ARE NOT  
31 EITHER THE PARENT OR THE GUARDIAN OF A PUPIL WHO ATTENDS SCHOOL IN THE SCHOOL  
32 DISTRICT BUT WHO ARE REQUIRED OR ALLOWED TO PROVIDE SERVICES DIRECTLY TO  
33 PUPILS WITHOUT THE SUPERVISION OF A CERTIFICATED EMPLOYEE MAY APPLY FOR A  
34 FINGERPRINT CLEARANCE CARD.** A school district may release the results of a  
35 background check **OR COMMUNICATE WHETHER THE PERSON HAS BEEN ISSUED OR DENIED  
36 A FINGERPRINT CLEARANCE CARD** to another school district for employment  
37 purposes. The employee's fingerprints and the form prescribed in subsection  
38 D of this section shall be submitted to the school district within twenty  
39 days after the date an employee begins work. A school district may terminate  
40 an employee if the information on the form provided under subsection D of  
41 this section is inconsistent with the information received from the  
42 fingerprint check **OR THE INFORMATION RECEIVED IN CONNECTION WITH A  
43 FINGERPRINT CLEARANCE CARD APPLICATION.** The school district shall develop  
44 procedures for fingerprinting employees. For the purposes of this  
45 subsection, "supervision" means under the direction of and, except for brief

1 periods of time during a school day or a school activity, within sight of a  
2 certificated employee when providing direct services to pupils.

3 B. Fingerprints submitted pursuant to this section shall be used to  
4 conduct a state and federal criminal records check pursuant to section  
5 41-1750 and Public Law 92-544. The department of public safety may exchange  
6 this fingerprint data with the federal bureau of investigation.

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

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

- 25 1. Sexual abuse of a minor.
- 26 2. Incest.
- 27 3. First or second degree murder.
- 28 4. Kidnapping.
- 29 5. Arson.
- 30 6. Sexual assault.
- 31 7. Sexual exploitation of a minor.
- 32 8. Felony offenses involving contributing to the delinquency of a  
33 minor.
- 34 9. Commercial sexual exploitation of a minor.
- 35 10. Felony offenses involving sale, distribution or transportation of,  
36 offer to sell, transport, or distribute or conspiracy to sell, transport or  
37 distribute marijuana or dangerous or narcotic drugs.
- 38 11. Felony offenses involving the possession or use of marijuana,  
39 dangerous drugs or narcotic drugs.
- 40 12. Misdemeanor offenses involving the possession or use of marijuana  
41 or dangerous drugs.
- 42 13. Burglary in the first degree.
- 43 14. Burglary in the second or third degree.
- 44 15. Aggravated or armed robbery.
- 45 16. Robbery.
- 46 17. A dangerous crime against children as defined in section 13-705.

- 1 18. Child abuse.
- 2 19. Sexual conduct with a minor.
- 3 20. Molestation of a child.
- 4 21. Manslaughter.
- 5 22. Aggravated assault.
- 6 23. Assault.
- 7 24. Exploitation of minors involving drug offenses.

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

- 19 1. The nature of the crime and the potential for crimes against  
20 children.
- 21 2. Offenses committed as a minor for which proceedings were held under  
22 the jurisdiction of a juvenile or an adult court.
- 23 3. Offenses that have been expunged by a court of competent  
24 jurisdiction, if the person has been pardoned or if the person's sentence has  
25 been commuted.
- 26 4. The employment record of the person since the commission of the  
27 crime if the crime was committed more than ten years before the governing  
28 board's consideration of whether to hire or terminate the person.
- 29 5. The reliability of the evidence of an admission of a crime unless  
30 made under oath in a court of competent jurisdiction.

31 F. Before employment with the school district, the district shall make  
32 documented, good faith efforts to contact previous employers of a person to  
33 obtain information and recommendations ~~which~~ THAT may be relevant to a  
34 person's fitness for employment. A governing board shall adopt procedures  
35 for conducting background investigations required by this subsection,  
36 including one or more standard forms for use by school district officials to  
37 document their efforts to obtain information from previous employers. A  
38 school district may provide information received as a result of a background  
39 investigation required by this section to any other school district, to any  
40 other public school and to any public entity that agrees pursuant to a  
41 contract or intergovernmental agreement to perform background investigations  
42 for school districts or other public schools. School districts and other  
43 public schools may enter into intergovernmental agreements pursuant to  
44 section 11-952 and cooperative purchasing agreements pursuant to rules  
45 adopted in accordance with section 15-213 for the purposes of performing or  
46 contracting for the performance of background investigations and for sharing

1 the results of background investigations required by this subsection.  
2 Information obtained about an employee or applicant for employment by any  
3 school district or other public school in the performance of a background  
4 investigation may be retained by that school district or the other public  
5 school or by any public entity that agrees pursuant to contract to perform  
6 background investigations for school districts or other public schools and  
7 may be provided to any school district or other public school that is  
8 performing a background investigation required by this subsection.

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

16 H. A contractor, subcontractor or vendor or any employee of a  
17 contractor, subcontractor or vendor who is contracted to provide services on  
18 a regular basis at an individual school shall obtain a valid fingerprint  
19 clearance card pursuant to title 41, chapter 12, article 3.1. ~~By December~~  
20 ~~31, 2009,~~ A school district governing board shall adopt policies to ~~be~~  
21 ~~implemented sixty days after adoption that may~~ exempt from the requirements  
22 ~~of this subsection persons who, as part of the normal job duties of the~~  
23 ~~persons, are not likely to have independent access to or unsupervised contact~~  
24 ~~with pupils~~ **A PERSON FROM THE REQUIREMENTS OF THIS SUBSECTION IF THE PERSON'S**  
25 **NORMAL JOB DUTIES ARE NOT LIKELY TO RESULT IN INDEPENDENT ACCESS TO OR**  
26 **UNSUPERVISED CONTACT WITH PUPILS.** A school district, its governing board  
27 members, its school council members and its employees are exempt from civil  
28 liability for the consequences of adoption and implementation of policies and  
29 procedures pursuant to this subsection unless the school district, its  
30 governing board members, its school council members or its employees are  
31 guilty of gross negligence or intentional misconduct.

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

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

1 information obtained is false and the school district knows the information  
2 is false or acts with reckless disregard of the information's truth or  
3 falsity.

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

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

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

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

27 (a) Ensure that the department of public safety completes a statewide  
28 criminal history information check on the applicant. A statewide criminal  
29 history information check shall be completed by the department of public  
30 safety every one hundred twenty days until the date that the fingerprint  
31 check is completed **OR THE FINGERPRINT CLEARANCE CARD IS ISSUED OR DENIED**.

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

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

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

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

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

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

14 Sec. 3. Section 23-1361, Arizona Revised Statutes, is amended to read:  
15 23-1361. Blacklist; definition; exceptions; privileged  
16 communications; immunity

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

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

43 C. An employer who in good faith provides information requested by a  
44 prospective employer about the reason for termination of a former employee or  
45 about the job performance, professional conduct or evaluation of a current or  
46 former employee is immune from civil liability for the disclosure or the

1 consequences of providing the information. There is a presumption of good  
2 faith if either:

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

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

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

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

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

25 G. In response to a request by another bank, savings and loan  
26 association, credit union, escrow agent, commercial mortgage banker, mortgage  
27 banker or mortgage broker it is not unlawful for a bank, a savings and loan  
28 association, a credit union, an escrow agent, a commercial mortgage banker, a  
29 mortgage banker or a mortgage broker to provide a written employment  
30 reference that advises of the applicant's involvement in any theft,  
31 embezzlement, misappropriation or other defalcation that has been reported to  
32 federal authorities pursuant to federal banking guidelines or reported to the  
33 department of financial institutions. In order for the immunity provided in  
34 subsection H of this section to apply, a copy of the written employment  
35 reference must be sent by the institution providing the reference to the last  
36 known address of the applicant in question.

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

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

S.B. 1391

APPROVED BY THE GOVERNOR APRIL 22, 2014.

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