

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

SENATE BILL 1237

AN ACT

AMENDING SECTIONS 15-802, 15-2401, 15-2402 AND 15-2403, ARIZONA REVISED STATUTES; RELATING TO 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~~ THE CHILD, at some lawful wage
17 earning 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~~ LIST OF STUDENTS PARTICIPATING
41 in ~~the~~ empowerment scholarship ~~account~~ ACCOUNTS to the school superintendent
42 of the county where the pupil resides.

43 G. For the purposes of this section:

44 1. "Educated pursuant to an empowerment scholarship account" means a
45 child whose parent has signed a contract pursuant to section 15-2402 to

1 educate the child outside of any school district or charter school and in
2 which the parent may but is not required to enroll the child in a private
3 school or to educate the child through any of the methods specified in
4 section 15-2402.

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

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

11 Sec. 2. Section 15-2401, Arizona Revised Statutes, is amended to read:

12 15-2401. Definitions

13 In this chapter, unless the context otherwise requires:

14 1. "Curriculum" means a complete course of study for a particular
15 content area or grade level, including any supplemental materials required by
16 the curriculum.

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

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

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

23 5. "Qualified school" means a nongovernmental primary or secondary
24 school or a preschool for handicapped students that is located in this state
25 and that does not discriminate on the basis of race, color or national
26 origin.

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

28 (a) ~~Is, or if the child is currently eligible to attend kindergarten,~~
29 ~~the department determines would be,~~ any of the following:

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

32 (ii) Identified by a school district **OR BY AN INDEPENDENT THIRD PARTY**
33 **PURSUANT TO SECTION 15-2403, SUBSECTION I**, as a child with a disability as
34 defined in section 15-761.

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

37 (iv) Attending a school or school district that has been assigned a
38 letter grade of D or F pursuant to section 15-241 **OR WHO IS CURRENTLY**
39 **ELIGIBLE TO ATTEND KINDERGARTEN AND WHO RESIDES WITHIN THE ATTENDANCE**
40 **BOUNDARY OF A SCHOOL THAT HAS BEEN ASSIGNED A LETTER GRADE OF D OR F PURSUANT**
41 **TO SECTION 15-241.**

42 (v) A previous recipient of a scholarship issued pursuant to section
43 15-891 or this section.

44 (vi) A child of a parent who is a member of the armed forces of the
45 United States and who is on active duty.

1 (vii) A child with a guardian who is a member of the armed forces of
2 the United States and who is on active duty.

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

6 (ix) A child who was a ward of the juvenile court and who achieved
7 permanency through adoption or permanent guardianship.

8 (b) And who meets any of the following requirements:

9 (i) Attended a governmental primary or secondary school as a full-time
10 student as defined in section 15-901 for at least the first one hundred days
11 of the prior fiscal year and who transferred from a governmental primary or
12 secondary school under a contract to participate in an empowerment
13 scholarship account.

14 (ii) Previously participated in the empowerment scholarship account
15 program.

16 (iii) Received a scholarship under section 43-1505 and who continues
17 to attend a qualified school.

18 (iv) Was eligible for an Arizona scholarship for pupils with
19 disabilities and received monies from a school tuition organization pursuant
20 to section 43-1505 or received an Arizona scholarship for pupils with
21 disabilities but did not receive monies from a school tuition organization
22 pursuant to section 43-1505 and who continues to attend a qualified school.

23 (v) Has not previously attended a governmental primary or secondary
24 school but is currently eligible to enroll in a kindergarten program in a
25 school district or charter school in this state.

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

27 Sec. 3. Section 15-2402, Arizona Revised Statutes, is amended to read:
28 15-2402. Arizona empowerment scholarship accounts; funds

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

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

34 1. USE A PORTION OF THE EMPOWERMENT SCHOLARSHIP ACCOUNT MONIES
35 ALLOCATED EACH QUARTER TO provide an education for the qualified student in
36 at least the subjects of reading, grammar, mathematics, social studies and
37 science, UNLESS THE EMPOWERMENT SCHOLARSHIP ACCOUNT IS ALLOCATED MONIES
38 ACCORDING TO A TRANSFER SCHEDULE OTHER THAN QUARTERLY TRANSFERS PURSUANT TO
39 SECTION 15-2403, SUBSECTION F.

40 2. Not enroll the qualified student in a school district or charter
41 school and release the school district from all obligations to educate the
42 qualified student. This paragraph does not relieve the school district or
43 charter school that the qualified student previously attended from the
44 obligation to conduct an evaluation pursuant to section 15-766.

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

5 4. Use the money deposited in the qualified student's Arizona
6 empowerment scholarship account only for the following expenses of the
7 qualified student:

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

9 (b) Textbooks required by a qualified school.

10 (c) Educational therapies or services ~~for the qualified student~~ from a
11 licensed or accredited practitioner or provider, including licensed or
12 accredited paraprofessionals or educational aides, **IF THE QUALIFIED STUDENT**
13 **MEETS ANY OF THE CRITERIA SPECIFIED IN SECTION 15-2401, PARAGRAPH 6,**
14 **SUBDIVISION (a), ITEM (i), (ii) OR (iii) AS DETERMINED BY A SCHOOL DISTRICT**
15 **OR BY AN INDEPENDENT THIRD PARTY PURSUANT TO SECTION 15-2403, SUBSECTION I.**

16 (d) Tutoring **OR TEACHING** services provided by ~~a tutor~~ **AN INDIVIDUAL OR**
17 **FACILITY** accredited by a state, regional or national accrediting
18 organization.

19 (e) Curriculum.

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

21 (g) Fees for a nationally standardized norm-referenced achievement
22 test, **AN** advanced placement ~~examinations~~ **EXAMINATION** or any exams related to
23 college or university admission.

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

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

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

30 (k) Fees for management of the empowerment scholarship account by
31 firms selected by the treasurer.

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

34 (m) Insurance or surety bond payments as required by the department of
35 education.

36 5. Not file an affidavit of intent to homeschool pursuant to section
37 15-802, subsection B, paragraph 2 or 3.

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

40 (a) Computer hardware or other technological devices.

41 (b) Transportation of the pupil.

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

43 C. In exchange for the parent's agreement pursuant to subsection B of
44 this section, the department shall transfer from the monies that would
45 otherwise be allocated to a recipient's prior school district, or if the

1 child is currently eligible to attend kindergarten, the monies that the
2 department determines would otherwise be allocated to a recipient's expected
3 school district of attendance, to the treasurer for deposit into an Arizona
4 empowerment scholarship account an amount that is equivalent to ninety per
5 cent of the sum of the base support level and additional assistance
6 prescribed in sections 15-185 and 15-943 for that particular student if that
7 student were attending a charter school. The department may retain up to
8 five per cent of the sum of the base support level and additional assistance
9 prescribed in sections 15-185 and 15-943 for each student with an empowerment
10 scholarship account for deposit in the department of education empowerment
11 scholarship account fund established in subsection D of this section, out of
12 which the department shall transfer one per cent of the sum of the base
13 support level and additional assistance prescribed in sections 15-185 and
14 15-943 for each student with an empowerment scholarship account to the state
15 treasurer for deposit in the state treasurer empowerment scholarship account
16 fund established in subsection E of this section.

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

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

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

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

3 H. A qualified school or a provider of services purchased pursuant to
4 subsection B, paragraph 4 of this section may not share, refund or rebate any
5 Arizona empowerment scholarship account monies with the parent or qualified
6 student in any manner.

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

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

14 Sec. 4. Section 15-2403, Arizona Revised Statutes, is amended to read:
15 15-2403. Empowerment scholarship accounts; administration;
16 audit; rules

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

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

25 C. The department may remove any parent or qualified student from
26 eligibility for an Arizona empowerment scholarship account if the parent or
27 qualified student fails to comply with the terms of the contract, ~~OR~~
28 applicable laws, rules or orders or ~~for~~ knowingly ~~misusing funds~~ MISUSES
29 MONIES or knowingly ~~failing~~ FAILS to comply with the terms of the contract
30 with intent to defraud and shall notify the treasurer. The department
31 shall ~~1-~~

32 ~~1-~~ notify the treasurer to suspend the account of a parent or
33 qualified student and shall notify the parent or qualified student in writing
34 that the account has been suspended and that no further transactions will be
35 allowed or disbursements made. The notification shall specify the reason for
36 the suspension and state that the parent or qualified student has ten days,
37 not including weekends, to respond and take corrective action.

38 ~~2-~~ If the parent or qualified student refuses or fails to contact the
39 department, furnish any information or make any report that may be required
40 for reinstatement within the ten-day period, the department may remove the
41 parent or qualified student pursuant to this subsection.

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

1 E. The department may refer cases of substantial misuse of monies to
2 the attorney general for investigation if the department obtains evidence of
3 fraudulent use of an account.

4 F. The department shall make quarterly transfers of the amount
5 calculated pursuant to section 15-2402, subsection C to the treasurer for
6 deposit into the empowerment scholarship account of each qualified student,
7 EXCEPT THE DEPARTMENT MAY MAKE TRANSFERS ACCORDING TO ANOTHER TRANSFER
8 SCHEDULE IF THE DEPARTMENT DETERMINES A TRANSFER SCHEDULE OTHER THAN
9 QUARTERLY TRANSFERS IS NECESSARY FOR THE OPERATION OF THE EMPOWERMENT
10 SCHOLARSHIP ACCOUNT.

11 G. The department shall determine a period that is between July 1 and
12 May 1 of each year during which it will accept applications for the following
13 fiscal year. On or before May 30 of each year, the department shall furnish
14 to the joint legislative budget committee an estimate of the amount required
15 to fund empowerment scholarship accounts for the following fiscal year. The
16 department shall include in its budget request for the following fiscal year
17 the amount estimated in section 15-2402, subsection C for each qualified
18 student.

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

21 1. Policies for conducting or contracting for examinations of the use
22 of account monies.

23 2. Conducting or contracting for random, quarterly and annual reviews
24 of accounts.

25 3. Establishing or contracting for the establishment of an online
26 anonymous fraud reporting service.

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

28 5. Policies that require a surety bond or insurance for account
29 holders.

30 I. THE DEPARTMENT SHALL CONTRACT WITH AN INDEPENDENT THIRD PARTY FOR
31 THE PURPOSES OF DETERMINING IF A QUALIFIED STUDENT IS ELIGIBLE TO RECEIVE
32 EDUCATIONAL THERAPIES OR SERVICES PURSUANT TO SECTION 15-2402, SUBSECTION B,
33 PARAGRAPH 4, SUBDIVISION (c).