

House Engrossed Senate Bill

**FILED**

**KEN BENNETT  
SECRETARY OF STATE**

State of Arizona  
Senate  
Fiftieth Legislature  
First Regular Session  
2011

CHAPTER 345

## **SENATE BILL 1264**

AN ACT

AMENDING TITLE 23, CHAPTER 6, ARTICLE 8, ARIZONA REVISED STATUTES, BY ADDING SECTION 23-1048; AMENDING TITLE 23, CHAPTER 6, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 12; RELATING TO WORKERS' COMPENSATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Title 23, chapter 6, article 8, Arizona Revised Statutes,  
3 is amended by adding section 23-1048, to read:

4 23-1048. Reasonable accommodations; earning capacity  
5 determination; definitions

6 A. IF AN EMPLOYER HAS MADE REASONABLE ACCOMMODATIONS PURSUANT TO THE  
7 AMERICANS WITH DISABILITIES ACT OR OTHER APPLICABLE FEDERAL OR STATE LAW,  
8 WAGES PAYABLE FOR THE MODIFIED JOB POSITION SHALL BE INCLUDED IN THE  
9 DETERMINATION OF ANY TEMPORARY PARTIAL OR PERMANENT PARTIAL EARNING CAPACITY,  
10 NOTWITHSTANDING THAT THE MODIFIED JOB IS NOT AVAILABLE IN THE OPEN  
11 COMPETITIVE LABOR MARKET.

12 B. FOR THE PURPOSES OF THIS SECTION:

13 1. "AMERICANS WITH DISABILITIES ACT" MEANS 42 UNITED STATES CODE  
14 SECTIONS 12101 THROUGH 12213 AND 47 UNITED STATES CODE SECTIONS 225 AND 611  
15 AND THE ADA AMENDMENTS ACT OF 2008 (P.L. 110-325; 122 STAT. 3553).

16 2. "REASONABLE ACCOMMODATIONS" MEANS ACCOMMODATIONS MADE BY THE DATE  
17 OF INJURY EMPLOYER TO ALLOW AN EMPLOYEE TO RETURN TO WORK BY MODIFYING JOB  
18 DUTIES CONSISTENT WITH THE EMPLOYEE'S LIMITATIONS.

19 Sec. 2. Title 23, chapter 6, Arizona Revised Statutes, is amended by  
20 adding article 12, to read:

21 ARTICLE 12. PRESUMPTIONS OF COMPENSABILITY

22 23-1101. Definition of report

23 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES, "REPORT" MEANS  
24 THE REPORT PRESCRIBED BY SECTION 23-1102.

25 23-1102. Workers' compensation presumptions of compensability;  
26 report

27 A PERSON THAT ADVOCATES A LEGISLATIVE PROPOSAL SHALL SUBMIT A REPORT TO  
28 THE JOINT LEGISLATIVE AUDIT COMMITTEE AS PRESCRIBED IN THIS ARTICLE, IF THE  
29 LEGISLATIVE PROPOSAL IF ENACTED WOULD DO EITHER OF THE FOLLOWING:

30 1. MANDATE THAT AN INSURER OR SELF-INSURED EMPLOYER DEEM THAT A  
31 DISEASE OR CONDITION HAS ARISEN OUT OF EMPLOYMENT, INCLUDING ESTABLISHING A  
32 PRESUMPTION OF COMPENSABILITY.

33 2. SUBSTANTIALLY MODIFY A STATUTE THAT ESTABLISHES A PRESUMPTION OF  
34 COMPENSABILITY FOR A DISEASE OR CONDITION.

35 23-1103. Impact of presumptions; liability

36 A. THE REPORT SHALL INCLUDE ALL OF THE FOLLOWING:

37 1. SCIENTIFIC EVIDENCE THAT SHOWS THE EXTENT TO WHICH:

38 (a) PEER REVIEWED SCIENTIFIC STUDIES EXIST THAT DOCUMENT A CAUSAL  
39 RELATIONSHIP THAT A SPECIFIC DISEASE OR CONDITION HAS BEEN DEMONSTRATED TO  
40 HAVE ARISEN OUT OF EMPLOYMENT.

41 (b) THE CENTERS FOR DISEASE CONTROL AND PREVENTION HAVE DETERMINED  
42 THAT A DISEASE OR CONDITION IS ACQUIRED OR TRANSMITTED.

43 (c) ALTERNATIVE EXPOSURE PATTERNS EXIST FOR ACQUIRING OR TRANSMITTING  
44 A DISEASE OR CONDITION OTHER THAN OCCUPATIONAL.

45 2. FINANCIAL INFORMATION TO INDICATE THE EXTENT TO WHICH:

1 (a) THE MANDATE MAY CAUSE AN EMPLOYER OR INSURANCE CARRIER TO PAY A  
2 WORKERS' COMPENSATION CLAIM FOR A NONWORK RELATED DISEASE OR CONDITION.

3 (b) THE MANDATE MAY INCREASE COSTS TO SELF-INSURED EMPLOYERS OR  
4 PREMIUMS CHARGED BY INSURANCE CARRIERS.

5 3. AN EXPLANATION OF WHY EXISTING COMPENSABILITY METHODS ARE  
6 INADEQUATE TO ACCURATELY DETERMINE IF A DISEASE OR CONDITION IS ACQUIRED OR  
7 TRANSMITTED IN THE COURSE OF EMPLOYMENT.

8 B. THE REPORT SHALL ADDRESS THE SPECIFIC LANGUAGE OF THE LEGISLATIVE  
9 PROPOSAL.

10 C. A PERSON THAT DOES NOT SUBMIT A REPORT AS PRESCRIBED IN THIS  
11 ARTICLE IS NOT SUBJECT TO ANY CIVIL SANCTION OR CRIMINAL PENALTY.

12 23-1104. Report procedures and deadlines

13 A REPORT MUST BE SUBMITTED TO THE JOINT LEGISLATIVE AUDIT COMMITTEE ON  
14 OR BEFORE SEPTEMBER 1 BEFORE THE START OF THE LEGISLATIVE SESSION FOR WHICH  
15 THE LEGISLATION IS PROPOSED. THE JOINT LEGISLATIVE AUDIT COMMITTEE SHALL  
16 ASSIGN THE WRITTEN REPORT TO THE APPROPRIATE LEGISLATIVE COMMITTEE OF  
17 REFERENCE ESTABLISHED PURSUANT TO SECTION 41-2954. THE LEGISLATIVE COMMITTEE  
18 OF REFERENCE SHALL HOLD AT LEAST ONE HEARING AND TAKE PUBLIC TESTIMONY AFTER  
19 RECEIVING THE REPORT. THE LEGISLATIVE COMMITTEE OF REFERENCE SHALL STUDY THE  
20 WRITTEN REPORT AND DELIVER A REPORT OF ITS RECOMMENDATIONS TO THE JOINT  
21 LEGISLATIVE AUDIT COMMITTEE, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, THE  
22 PRESIDENT OF THE SENATE, THE GOVERNOR AND THE COMMISSION ON OR BEFORE  
23 DECEMBER 1 OF THE YEAR IN WHICH THE REPORT IS SUBMITTED.

APPROVED BY THE GOVERNOR APRIL 29, 2011.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 29, 2011.

Passed the House April 18, 2011,

Passed the Senate February 22, 2011,

by the following vote: 56 Ayes,

by the following vote: 30 Ayes,

2 Nays, 2 Not Voting

0 Nays, 0 Not Voting

[Signature]  
Speaker of the House

[Signature]  
President of the Senate

Cheryl Laube  
Chief Clerk of the House

[Signature]  
Secretary of the Senate

**EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR**

This Bill was received by the Governor this  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary to the Governor

Approved this \_\_\_\_\_ day of

\_\_\_\_\_, 20\_\_\_\_,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Governor of Arizona

**S.B. 1264**

**EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE**

This Bill was received by the Secretary of State  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

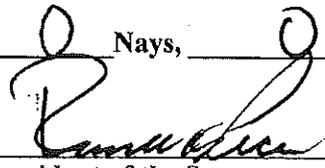
\_\_\_\_\_  
Secretary of State

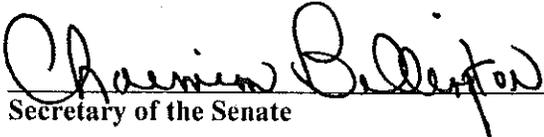
SENATE CONCURS IN HOUSE  
AMENDMENTS AND FINAL PASSAGE

Passed the Senate April 19, 2011

by the following vote: 30 Ayes,

0 Nays, 0 Not Voting

  
\_\_\_\_\_  
President of the Senate

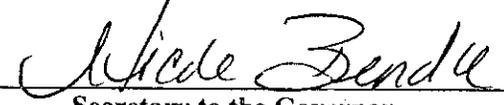
  
\_\_\_\_\_  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill received by the Governor this

20 day of April, 2011

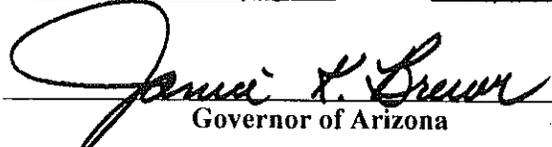
at 12:00 o'clock P. M.

  
\_\_\_\_\_  
Secretary to the Governor

Approved this 29<sup>th</sup> day of

April

at 11:40 o'clock A. M.

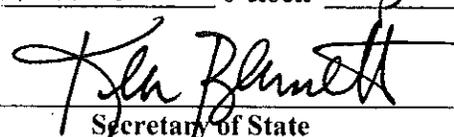
  
\_\_\_\_\_  
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 29<sup>th</sup> day of April, 2011

at 7:30 o'clock P. M.

  
\_\_\_\_\_  
Secretary of State

S.B. 1264