

Senate Engrossed House Bill

FILED
MICHELE REAGAN
SECRETARY OF STATE

State of Arizona
House of Representatives
Fifty-second Legislature
Second Regular Session
2016

CHAPTER 186

HOUSE BILL 2240

AN ACT

AMENDING SECTION 23-941, ARIZONA REVISED STATUTES; AMENDING TITLE 23, CHAPTER 6, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 23-954; AMENDING SECTIONS 23-1044, 23-1062 AND 23-1070.01, ARIZONA REVISED STATUTES; 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. Section 23-941, Arizona Revised Statutes, is amended to
3 read:

4 23-941. Hearing rights and procedure

5 A. Subject to ~~the provisions of~~ section 23-947, any interested party
6 may file a request for a hearing concerning a claim.

7 B. A request for a hearing shall be made in writing, BE signed by or
8 on behalf of the interested party and ~~including his~~ INCLUDE THE INTERESTED
9 PARTY'S address, ~~stating~~ STATE that a hearing is desired, and BE filed with
10 the commission.

11 C. The commission shall refer the request for the hearing to the
12 administrative law judge division for determination as expeditiously as
13 possible. The presiding administrative law judge may dismiss a request for
14 hearing ~~when~~ IF it appears to ~~his~~ THE PRESIDING ADMINISTRATIVE LAW JUDGE'S
15 satisfaction that the disputed issue or issues have been resolved by the
16 parties. Any interested party who objects to such dismissal may request a
17 review pursuant to section 23-943.

18 D. At least twenty days' prior notice of the time and place of the
19 hearing shall be given to all parties in interest by mail at their last known
20 address. In the case of a hearing concerning suspension of benefits,
21 pursuant to section 23-1026, 23-1027 or 23-1071, only ten days' prior notice
22 ~~need be given~~ IS REQUIRED. Hearings shall be held in the county where the
23 workman resided at the time of the injury or ~~such other~~ ANOTHER place
24 selected by the administrative law judge.

25 E. A record of all proceedings at the hearing shall be made but need
26 not be transcribed unless a party applies to the court of appeals for a writ
27 of certiorari pursuant to section 23-951. The record of the proceedings if
28 not transcribed, shall be kept for at least two years but may be destroyed
29 after ~~such~~ THAT time if a transcription is not requested.

30 F. Except as otherwise provided in this section and rules ~~or~~ OF
31 procedure established by the commission, the administrative law judge is not
32 bound by common law or statutory rules of evidence or by technical or formal
33 rules of procedure and may conduct the hearing in any manner that will
34 achieve substantial justice.

35 G. Any party shall be entitled to issuance and service of subpoenas
36 under ~~the provisions of~~ section 23-921. Any party or ~~his~~ THE PARTY'S
37 representative may serve such subpoenas.

38 H. Any interested party or ~~his~~ THE INTERESTED PARTY'S authorized agent
39 shall be entitled to inspect any claims file of the commission, provided that
40 such authorization is filed in writing with the commission.

41 I. ANY INTERESTED PARTY IS ENTITLED TO ONE CHANGE OF ADMINISTRATIVE
42 LAW JUDGE AS A MATTER OF RIGHT. TO EXERCISE THE RIGHT TO A CHANGE OF
43 ADMINISTRATIVE LAW JUDGE, THE INTERESTED PARTY SHALL FILE A NOTICE OF CHANGE
44 OF ADMINISTRATIVE LAW JUDGE. THE NOTICE OF CHANGE OF ADMINISTRATIVE LAW
45 JUDGE SHALL:

1 1. BE SIGNED BY THE INTERESTED PARTY OR THE INTERESTED PARTY'S
2 AUTHORIZED AGENT.

3 2. STATE THE NAME OF THE ADMINISTRATIVE LAW JUDGE TO BE CHANGED.

4 3. CERTIFY THAT THE INTERESTED PARTY OR THE INTERESTED PARTY'S
5 AUTHORIZED AGENT HAS TIMELY FILED THE NOTICE OF CHANGE OF ADMINISTRATIVE LAW
6 JUDGE. A NOTICE OF CHANGE OF ADMINISTRATIVE LAW JUDGE AS A MATTER OF RIGHT
7 IS TIMELY IF FILED NOT MORE THAN THIRTY DAYS AFTER THE DATE OF THE NOTICE OF
8 HEARING OR NOT MORE THAN THIRTY DAYS AFTER A NEW ADMINISTRATIVE LAW JUDGE IS
9 ASSIGNED TO THE CLAIM IF ANOTHER INTERESTED PARTY OR THE INTERESTED PARTY'S
10 AUTHORIZED AGENT HAS FILED A NOTICE OF CHANGE OF ADMINISTRATIVE LAW JUDGE AS
11 A MATTER OF RIGHT.

12 4. CERTIFY THAT THE INTERESTED PARTY OR THE INTERESTED PARTY'S
13 AUTHORIZED AGENT HAS NOT PREVIOUSLY BEEN GRANTED A CHANGE OF ADMINISTRATIVE
14 LAW JUDGE AS A MATTER OF RIGHT FOR THE CLAIM.

15 ~~I. J. Within thirty days after the date of notice of hearing~~ Any
16 interested party to a hearing before the commission OR THE INTERESTED PARTY'S
17 AUTHORIZED AGENT may file an affidavit for change of administrative law judge
18 FOR CAUSE against ~~any hearing officer of the commission hearing such matters~~
19 ~~or commencing to hear such matter, setting~~ A PRESIDING ADMINISTRATIVE LAW
20 JUDGE THAT SETS forth any of the grounds as provided in subsection ~~J~~ K of
21 this section. ~~and~~ The CHIEF administrative law judge shall immediately
22 transfer the matter to another ~~officer of the commission who shall preside~~
23 ~~therein. Not more than one change of administrative law judge shall be~~
24 ~~granted to any one party.~~ ADMINISTRATIVE LAW JUDGE. AN AFFIDAVIT FOR CHANGE
25 OF ADMINISTRATIVE LAW JUDGE FOR CAUSE SHALL BE FILED WITHIN THE TIME FRAMES
26 PROVIDED IN SUBSECTION I OF THIS SECTION.

27 ~~J~~ K. Grounds ~~which~~ THAT may be alleged as provided in subsection ~~I~~
28 J of this section for change of administrative law judge FOR CAUSE are:

29 1. That the administrative law judge has been engaged as counsel in
30 the hearing ~~prior to~~ BEFORE appointment as administrative law judge.

31 2. That the administrative law judge is otherwise interested in the
32 hearing.

33 3. That the administrative law judge is of kin or otherwise related to
34 a party to the hearing.

35 4. That the administrative law judge is a material witness in the
36 hearing.

37 5. That the party filing the affidavit has cause to believe and does
38 believe that on account of the bias, prejudice, ~~or~~ interest of the
39 administrative law judge ~~he~~ THE ADMINISTRATIVE LAW JUDGE cannot obtain a fair
40 and impartial hearing.

41 L. FOR THE PURPOSES OF SUBSECTIONS I AND J OF THIS SECTION, THE
42 EMPLOYER AND THE EMPLOYER'S INSURANCE CARRIER ARE CONSIDERED A SINGLE PARTY
43 UNLESS THE EMPLOYER'S AND THE EMPLOYER'S INSURANCE COMPANY'S INTERESTS ARE IN
44 CONFLICT.

1 ~~K.~~ M. After final disposition of the proceedings in which they are
2 used, exhibits marked for identification or introduced as evidence at
3 hearings or proceedings ~~which~~ THAT cannot be readily copied, photocopied,
4 mechanically reproduced or otherwise preserved as a document for inclusion in
5 the record of the proceedings may be disposed of in the following manner:

6 1. By written notice, the attorneys of record, or if none, the
7 parties, shall be notified that the counsel or the party introducing ~~such~~ THE
8 exhibit may claim it at the industrial commission within sixty days.

9 2. After sixty days following notification, any ~~such~~ exhibit remaining
10 in the custody of the industrial commission shall be disposed of as state
11 surplus property pursuant to the direction of the department of
12 administration, ~~surplus property division~~. A written description of ~~any such~~
13 THE exhibit shall be included in the record to preserve ~~its~~ THE EXHIBIT'S
14 identity.

15 Sec. 2. Title 23, chapter 6, article 3, Arizona Revised Statutes, is
16 amended by adding section 23-954, to read:

17 23-954. Payment of interest on awards

18 INTEREST ON THE PAYMENT OF BENEFITS SHALL BE PAID AT A RATE OF INTEREST
19 AT THE LESSER OF TEN PERCENT PER ANNUM OR A RATE PER ANNUM THAT IS EQUAL TO
20 ONE PERCENT PLUS THE PRIME RATE AS PUBLISHED BY THE BOARD OF GOVERNORS OF THE
21 FEDERAL RESERVE SYSTEM IN STATISTICAL RELEASE H.15 OR ANY PUBLICATION THAT
22 MAY SUPERSEDE IT ON THE DATE BENEFITS ARE PAID. INTEREST SHALL BE PAID ONLY
23 IN THE FOLLOWING INSTANCES:

24 1. ON AN AWARD ENTERED BY THE COMMISSION OR BY NOTICE OF CLAIM STATUS
25 AWARDING PERMANENT PARTIAL DISABILITY BENEFITS PURSUANT TO SECTION 23-1044,
26 SUBSECTION B OR C OR PERMANENT TOTAL DISABILITY BENEFITS PURSUANT TO SECTION
27 23-1045, SUBSECTION B OR C, IF BENEFITS ARE NOT PAID WITHIN TEN DAYS AFTER
28 THE DATE THE AWARD OR NOTICE BECOMES FINAL.

29 2. ON A CLAIM FOR DEPENDENT BENEFITS, IF THE CLAIM IS DENIED AND
30 SUBSEQUENTLY ACCEPTED OR FOUND COMPENSABLE BY AWARD OF THE COMMISSION, FROM
31 THE DATE THE CLAIM FOR BENEFITS WAS FILED.

32 Sec. 3. Section 23-1044, Arizona Revised Statutes, is amended to read:

33 23-1044. Compensation for partial disability; computation

34 A. For temporary partial disability there shall be paid during the
35 period thereof sixty-six and two-thirds ~~per cent~~ PERCENT of the difference
36 between the wages earned before the injury and the wages ~~which~~ THAT the
37 injured person is able to earn thereafter. Unemployment benefits received
38 during the period of temporary partial disability ~~and fifty per cent of~~
39 ~~retirement and pension benefits received from the insured or self insured~~
40 ~~employer during the period of temporary partial disability~~ shall be
41 considered wages able to be earned.

42 B. Disability shall be deemed permanent partial disability if caused
43 by any of the following specified injuries, and compensation of fifty-five
44 ~~per cent~~ PERCENT of the average monthly wage of the injured employee, in

- 1 addition to the compensation for temporary total disability, shall be paid
2 for the period given in the following schedule:
- 3 1. For the loss of a thumb, fifteen months.
 - 4 2. For the loss of a first finger, commonly called the index finger,
5 nine months.
 - 6 3. For the loss of a second finger, seven months.
 - 7 4. For the loss of a third finger, five months.
 - 8 5. For the loss of the fourth finger, commonly called the little
9 finger, four months.
 - 10 6. The loss of a distal or second phalange of the thumb or the distal
11 or third phalange of the first, second, third or fourth finger, shall be
12 considered equal to the loss of one-half of the thumb or finger, and
13 compensation shall be one-half of the amount specified for the loss of the
14 entire thumb or finger.
 - 15 7. The loss of more than one phalange of the thumb or finger shall be
16 considered as the loss of the entire finger or thumb, but in no event shall
17 the amount received for more than one finger exceed the amount provided for
18 the loss of a hand.
 - 19 8. For the loss of a great toe, seven months.
 - 20 9. For the loss of a toe other than the great toe, two and one-half
21 months.
 - 22 10. The loss of the first phalange of any toe shall be considered
23 equal to the loss of one-half of the toe and compensation shall be one-half
24 of the amount for one toe.
 - 25 11. The loss of more than one phalange shall be considered as the loss
26 of the entire toe.
 - 27 12. For the loss of a major hand, fifty months, or of a minor hand,
28 forty months.
 - 29 13. For the loss of a major arm, sixty months, or of a minor arm,
30 fifty months.
 - 31 14. For the loss of a foot, forty months.
 - 32 15. For the loss of a leg, fifty months.
 - 33 16. For the loss of an eye by enucleation, thirty months.
 - 34 17. For the permanent and complete loss of sight in one eye without
35 enucleation, twenty-five months.
 - 36 18. For permanent and complete loss of hearing in one ear, twenty
37 months.
 - 38 19. For permanent and complete loss of hearing in both ears, sixty
39 months.
 - 40 20. The permanent and complete loss of the use of a finger, toe, arm,
41 hand, foot or leg may be deemed the same as the loss of any such member by
42 separation.
 - 43 21. For the partial loss of use of a finger, toe, arm, hand, foot or
44 leg, or partial loss of sight or hearing, fifty ~~per cent~~ PERCENT of the
45 average monthly wage during that proportion of the number of months in the

1 foregoing schedule provided for the complete loss of use of such member, or
2 complete loss of sight or hearing, which the partial loss of use thereof
3 bears to the total loss of use of such member or total loss of sight or
4 hearing. ~~In~~ FOR THE PURPOSES OF this paragraph, "loss of use" means a loss
5 of physical function of the affected member, sight or hearing. The effect on
6 an employee's ability to return to the employee's occupation at the time of
7 the injury shall not be considered in establishing the percentage of loss
8 under this section, except that if the employee is unable to return to the
9 work the employee was performing at the time the employee was injured due to
10 the total or partial loss of use, compensation pursuant to this section shall
11 be calculated based on seventy-five ~~per cent~~ PERCENT of the average monthly
12 wage.

13 22. For permanent disfigurement about the head or face, ~~which shall~~
14 ~~include~~ INCLUDING injury to or loss of teeth, the commission ~~may, in~~
15 ~~accordance with the provisions of~~ PURSUANT TO section 23-1047, MAY allow such
16 sum for compensation thereof as it deems just, in accordance with the proof
17 submitted, for a period of not ~~to exceed~~ MORE THAN eighteen months.

18 C. In cases not enumerated in subsection B of this section, if the
19 injury causes permanent partial disability for work, the employee shall
20 receive during such disability compensation equal to fifty-five ~~per cent~~
21 PERCENT of the difference between the employee's average monthly wages before
22 the accident and the amount ~~which~~ THAT represents the employee's reduced
23 monthly earning capacity resulting from the disability, but the payment shall
24 not continue after the disability ends, or the death of the injured employee,
25 and in case the partial disability begins after a period of total disability,
26 the period of total disability shall be deducted from the total period of
27 compensation.

28 D. In determining the amount ~~which~~ THAT represents the reduced monthly
29 earning capacity for the purposes of subsections A and C of this section,
30 consideration shall be given, among other things, to any previous disability,
31 the occupational history of the injured employee, the nature and extent of
32 the physical disability, the type of work the injured employee is able to
33 perform ~~subsequent to~~ AFTER the injury, any wages received for work performed
34 ~~subsequent to~~ AFTER the injury and the age of the employee at the time of
35 injury. If the employee is unable to return to work or continue working in
36 any employment after the injury due to the employee's termination from
37 employment for reasons that are unrelated to the industrial injury, the
38 commission may consider the wages that the employee could have earned from
39 that employment as representative of the employee's earning capacity. A
40 determination of earning capacity that is based on wages that could have been
41 earned from previously terminated employment is subject to change under
42 subsection F of this section and an employee retains the right to later
43 establish that the employee's reduced earning capacity is related in whole or
44 in part to the industrial injury.

1 E. In case there is a previous disability, as the loss of one eye, one
2 hand, one foot or otherwise, the percentage of disability for a subsequent
3 injury shall be determined by computing the percentage of the entire
4 disability and deducting therefrom the percentage of the previous disability
5 as it existed at the time of the subsequent injury.

6 F. For the purposes of subsection C of this section, the commission,
7 in accordance with the provisions of section 23-1047 when the physical
8 condition of the injured employee becomes stationary, shall determine the
9 amount ~~which~~ THAT represents the reduced monthly earning capacity and ~~upon~~ ON
10 such determination make an award of compensation ~~which shall be~~ THAT IS
11 subject to change in any of the following events:

12 1. ~~Upon~~ ON a showing of a change in the physical condition of the
13 employee ~~subsequent to~~ AFTER such findings and award arising out of the
14 injury resulting in the reduction or increase of the employee's earning
15 capacity.

16 2. ~~Upon~~ ON a showing of a reduction in the earning capacity of the
17 employee arising out of such injury where there is no change in the
18 employee's physical condition, ~~subsequent to~~ AFTER the findings and award.

19 3. ~~Upon~~ ON a showing that the employee's earning capacity has
20 increased ~~subsequent to~~ AFTER such findings and award.

21 G. The commission may adopt a schedule for rating loss of earning
22 capacity and reasonable and proper rules to carry out ~~the provisions of~~ this
23 section. In all cases involving this section, except for cases under
24 subsection B of this section, or in cases involving a request pursuant to
25 section 23-1061, subsection J for disability compensation, if any issue is
26 raised regarding whether the injured employee has suffered a loss of earning
27 capacity because of an inability to obtain or retain suitable work, the
28 following apply:

29 1. The employer or carrier may present evidence showing that the
30 inability to obtain suitable work is due, in whole or in part, to economic or
31 business conditions, or other factors unrelated to the industrial
32 injury. The injured employee may present evidence showing that the inability
33 to obtain suitable work is due, in whole or in part, to the industrial injury
34 or limitations resulting from the injury. The administrative law judge shall
35 consider all such evidence in determining whether and to what extent the
36 injured employee has sustained any loss of earning capacity.

37 2. In cases involving loss of employment, the employer or carrier may
38 present evidence showing that the injured employee was terminated from
39 employment or has not obtained suitable work, or both, due, in whole or in
40 part, to economic or business conditions, or other factors unrelated to the
41 injury. The injured employee may present evidence showing that such
42 termination or inability to obtain suitable work is due, in whole or in part,
43 to the industrial injury or limitations resulting from the injury. The
44 administrative law judge shall consider all such evidence in determining

1 whether and to what extent the injured employee has sustained any loss or
2 additional loss of earning capacity.

3 H. Any single injury or disability that is listed in subsection B of
4 this section and that is not converted into an injury or disability
5 compensated under subsection C of this section by operation of this section
6 shall be treated as scheduled under subsection B of this section regardless
7 of its actual effect on the injured employee's earning capacity.

8 Sec. 4. Section 23-1062, Arizona Revised Statutes, is amended to read:

9 23-1062. Medical, surgical, hospital benefits; translation
10 services; commencement of compensation; method of
11 compensation

12 A. Promptly, on notice to the employer, every injured employee shall
13 receive medical, surgical and hospital benefits or other treatment, nursing,
14 medicine, surgical supplies, crutches and other apparatus, including
15 artificial members, reasonably required at the time of the injury, and during
16 the period of disability. Such benefits shall be termed "medical, surgical
17 and hospital benefits."

18 B. MEDICAL, SURGICAL AND HOSPITAL BENEFITS INCLUDE TRANSLATION
19 SERVICES, IF NEEDED. A CARRIER, SELF-INSURANCE POOL OR EMPLOYER THAT DOES
20 NOT DIRECT CARE PURSUANT TO SECTION 23-1070 MAY CHOOSE THE TRANSLATOR IF THE
21 TRANSLATOR IS CERTIFIED BY AN OUTSIDE AGENCY AND IS NOT AN EMPLOYEE OF THE
22 CARRIER, SELF-INSURANCE POOL OR EMPLOYER. IF THE CARRIER, SELF-INSURANCE
23 POOL OR EMPLOYER IS UNABLE TO LOCATE A CERTIFIED TRANSLATOR FOR THE
24 PARTICULAR LANGUAGE OR DIALECT NEEDED, THE PARTIES MAY AGREE ON A TRANSLATOR
25 WHO IS NOT A CERTIFIED TRANSLATOR.

26 ~~B.~~ C. The first installment of compensation is to be paid no later
27 than the twenty-first day after written notification by the commission to the
28 carrier of the filing of a claim ~~except where~~ UNLESS the right to
29 compensation is denied. Thereafter, compensation shall be paid at least once
30 each two weeks during the period of temporary total disability and at least
31 monthly thereafter. Compensation shall not be paid for the first seven days
32 after the injury. If the incapacity extends beyond the period of seven days,
33 compensation shall begin on the eighth day after the injury, but if the
34 disability continues for one week beyond such seven days, compensation shall
35 be computed from the date of the injury.

36 ~~C.~~ D. Compensation shall be made by negotiable instrument, payable
37 immediately on demand or, at the election of the employee and if offered by
38 the employer or carrier, by another commonly accepted method for transferring
39 money by banking institutions, including electronic fund transfers to the
40 employee's account or a prepaid debit card account that is established for
41 the purpose of making direct electronic payment to the employee.

Passed the House February 18 2016

by the following vote: 57 Ayes,

1 Nays, 2 Not Voting

[Signature]

Speaker of the House Pro Tempore

[Signature]
Chief Clerk of the House

Passed the Senate March 28, 2016

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

[Signature]

President of the Senate

[Signature]
Secretary of the Senate

~~EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR~~

~~This Bill received by the Governor this~~

~~_____ day of _____, 20_____~~

~~at _____ o'clock _____ M.~~

~~_____
Secretary to the Governor~~

~~Approved this _____ day of~~

~~_____~~

~~at _____ o'clock _____ M.~~

~~_____
Governor of Arizona~~

~~EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE~~

~~This Bill received by the Secretary of State~~

~~this _____ day of _____, 20_____~~

~~at _____ o'clock _____ M.~~

~~_____
Secretary of State~~

H.B. 2240

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

_____ May 6, 2016,

by the following vote: _____ 54 Ayes,

_____ 0 Nays, _____ 6 Not Voting

_____ [Signature]
Speaker of the House

_____ [Signature]
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this
10th day of May, 2016,

at 3:42 o'clock P. M.

_____ [Signature]
Secretary to the Governor

Approved this _____ 11th day of

_____ May, 2016,

at _____ 9:19 o'clock A. M.

_____ [Signature]
Governor of Arizona

H.B. 2240

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State
this 12 day of May, 2016,

at 9:08 o'clock A M.

_____ [Signature]
Secretary of State