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MICHELE REAGAN

SECRETARY OF STATE

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CHAPTER 147

SENATE BILL 1478

AN ACT

AMENDING SECTIONS 23-401, 23-407, 23-408, 23-418.01, 23-420, 23-421 AND 23-422, ARIZONA REVISED STATUTES; AMENDING SECTION 23-422, ARIZONA REVISED STATUTES, AS AMENDED BY THIS ACT; AMENDING SECTION 23-423, ARIZONA REVISED STATUTES; AMENDING TITLE 23, CHAPTER 2, ARTICLE 10, ARIZONA REVISED STATUTES, BY ADDING SECTION 23-432; AMENDING SECTIONS 23-471, 23-473, 23-475, 23-478, 23-485, 23-486, 23-488, 23-491, 23-491.04 AND 23-491.06, ARIZONA REVISED STATUTES; RELATING TO OCCUPATIONAL SAFETY AND HEALTH.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 23-401, Arizona Revised Statutes, is amended to read:

23-401. Definitions

In this article, unless the context otherwise requires:

1. "Board" means a review board established pursuant to section 23-422.

2. "Commission" means the industrial commission of Arizona.

3. "De minimis violation" means a condition or practice ~~which~~ THAT, although undesirable, has no direct or immediate relationship to safety or health.

4. "Director" means the director of the division.

5. "Division" means the division of occupational safety and health within the commission.

6. "Employee" means any person performing services for an employer, including any person defined as an employee pursuant to section 23-901, except employees engaged in household domestic labor.

7. "Employer" means any individual or type of organization, including ~~the~~ THIS state and all ~~its~~ political subdivisions OF THIS STATE, ~~which~~ THAT has in its employ one or more individuals performing services for it in employment and includes self-employed persons, but does not include employers of household domestic labor.

8. "Interested party" means the commission and ~~its~~ THE COMMISSION'S agents, the employer and the affected employees of such employer.

9. "MODEL SYSTEM" MEANS AN EXEMPLARY AND VOLUNTARY IMPLEMENTED WORKER SAFETY AND HEALTH MANAGEMENT SYSTEM THAT:

(a) EXCEEDS BASIC COMPLIANCE WITH OCCUPATIONAL SAFETY AND HEALTH LAWS AND REGULATIONS.

(b) MEETS THE REQUIREMENTS ADOPTED BY THE DIVISION PURSUANT TO SECTION 23-432.

~~9.~~ 10. "Non-serious violation" means a condition or practice in a place of employment ~~which~~ THAT does not constitute a serious violation but ~~which~~ THAT violates a standard or regulation and has a direct or immediate relationship to safety or health, unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of such condition or practice.

11. "PROGRAM" MEANS THE VOLUNTARY PROTECTION PROGRAM OR ANY OTHER PROGRAM UNDER WHICH THE DIRECTOR RECOGNIZES AND PARTNERS WITH WORKPLACES THAT HAVE IMPLEMENTED A MODEL SYSTEM.

~~10.~~ 12. "Recognized hazard" means an unsafe or unhealthful condition or practice recognized as such with respect to the standard of knowledge in the industry.

~~11.~~ 13. "Regulation" means any written regulation of occupational safety and health governing places of employment formulated pursuant to

section 23-410, exclusive of standards, and shall have the same meaning as and include the term "rule".

~~12.~~ 14. "Serious violation" means a condition or practice in a place of employment ~~which~~ THAT violates a standard, regulation or section 23-403, subsection A and produces a substantial probability that death or serious physical harm could result, unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of such condition or practice.

~~13.~~ 15. "Standard" means any occupational safety and health standard ~~which~~ THAT has been adopted and promulgated by a nationally recognized standards-producing organization or the federal government and shall have the same meaning as, and include the term "code".

~~14.~~ 16. "Trade secret" means a plan or process, tool, mechanism, or compound not patented, known only to its owner and those of ~~his~~ THE OWNER'S employees to whom it is necessary to confide it, or other information that the employer treats as confidential and has a reasonable basis for doing so.

~~15.~~ 17. "Workplace" means a location or site wherein work, either temporary or permanent, is being conducted in connection with an industry, trade or business.

Sec. 2. Section 23-407, Arizona Revised Statutes, is amended to read:

23-407. <u>Duties and powers of the division</u>

The division on behalf of the commission shall:

1. Recommend all standards, rules or changes thereto, pursuant to section 23-410, to the commission for the commission's approval or disapproval.

2. Have the authority to enforce all such standards or rules, after adoption by the commission, pursuant to the procedures and requirements of this article.

3. Implement an occupational safety and health program that includes the following duties and responsibilities:

(a) Development of a statewide occupational safety and health education and training program to acquaint employers, supervisors, employees and employee representatives with the most modern and effective techniques of accident prevention and occupational health control.

(b) Development of training programs for employees of the division, and where necessary develop certification programs for recognition of competent, trained personnel.

(c) Planning, organizing, conducting or attending occupational safety and health seminars, conferences and meetings designed for management, supervisory personnel, employees and employer representatives and establishing liaison with other safety and health groups as may be necessary.

(d) Definition and establishment of necessary research projects.

(e) Arrangement and procurement of necessary contractual services and training aids.

(f) Development of specific occupational safety and health programs for employer and employee representative groups.

4. Develop and maintain an effective program of collection, compilation and analysis of occupational safety and health statistics. The division shall compile statistics on work injuries and illnesses that shall include all disabling, serious or significant injuries and illnesses whether or not involving loss of time from work, other than minor injuries requiring only first aid treatment and that do not involve medical treatment, loss of consciousness, restriction of work or motion or transfer to another job.

5. Coordinate the responsibilities and functions of other state agencies and political subdivisions of the state with regard to occupational safety and health in order to develop a comprehensive statewide program.

6. Contract with the office of administrative hearings to conduct hearings and adjudicate contested cases on an employer filing a notice of contest of a citation, PROPOSED PENALTY OR ABATEMENT PERIOD pursuant to this article. The decisions of the office of administrative hearings shall be subject to appeal to the review board established pursuant to this article.

Sec. 3. Section 23-408, Arizona Revised Statutes, is amended to read:

23-408. <u>Inspection of places and practices of employment; closing conference; prohibitions; employee initiation of investigation; violation; classification; injunction</u>

A. EXCEPT AS PRESCRIBED IN SECTION 23-432, SUBSECTION E, the director of the division of occupational safety and health, or the director's authorized representative, on presentation of credentials, shall be permitted to inspect places of employment, question employees and investigate conditions, practices or matters in connection with employment subject to this article at reasonable times, as the director or the director's authorized representative may deem appropriate to determine whether any person has violated any provision of this article or any rule or regulation issued pursuant to this article or that may aid in the enforcement of ~~the provisions of~~ this article. An employer or other person shall not refuse to admit the director or the director's authorized representatives to any place or refuse to permit the inspection if the proper credentials are presented and the inspection is made at a reasonable time.

B. IN MAKING INSPECTIONS AND INVESTIGATIONS, THE DIRECTOR OR THE DIRECTOR'S AUTHORIZED REPRESENTATIVE MAY REQUIRE THE ATTENDANCE AND TESTIMONY OF WITNESSES AND THE PRODUCTION OF EVIDENCE UNDER OATH.

WITNESSES SHALL BE PAID THE SAME FEES AND MILEAGE PAID TO WITNESSES IN THE COURTS OF THIS STATE. IF ANY PERSON FAILS OR REFUSES TO OBEY SUCH AN ORDER, THE DIRECTOR OR THE DIRECTOR'S AUTHORIZED REPRESENTATIVE MAY APPLY TO ANY SUPERIOR COURT IN ANY COUNTY WHERE THE PERSON IS FOUND, RESIDES OR TRANSACTS BUSINESS FOR AN ORDER REQUIRING THE PERSON TO PRODUCE EVIDENCE AND TO GIVE TESTIMONY AS ORDERED. FAILURE TO OBEY SUCH AN ORDER IS CONTEMPT OF COURT.

~~B.~~ C. The director or the director's authorized representative shall inspect at least every six months any operation that mixes rock, sand, gravel or similar materials with water and cement or with asphalt and that is not included in the definition of mine in section 27-301. The director or the director's authorized representative shall monitor and work with the mine inspector only to the extent necessary to ensure this state's compliance with federal occupational safety and health act standards, (P.L. 91-596).

~~C.~~ D. Notice of an intended inspection shall not be given to an employer before the time of actual entry on the workplace, except by specific authorization by the director.

~~D.~~ E. A representative of the employer and a representative authorized by the employer's employees shall be given an opportunity to accompany the director or the director's authorized representative during the physical inspection of any workplace for the purpose of aiding the inspection. Where there is no authorized employee representative, the director or the director's authorized representative shall consult a reasonable number of employees concerning matters of safety and health in the workplace.

~~E.~~ F. Except as provided in section 23-426, information and facts developed by the commission, the director or any employee of the commission or division in the course of any inspection or investigation are public records subject to inspection pursuant to title 39, chapter 1, article 2, if, pursuant to section 23-415, subsection D, the inspection or investigation has been closed or a citation has been issued. Such information and facts shall not be admissible in any court or before any administrative body except pursuant to this article. Notwithstanding this subsection, the director or any commission employee is not required to appear at any deposition, trial or hearing concerning a division inspection or investigation unless the appearance is related to a hearing held pursuant to this article. Hearings held pursuant to this article are open to the public.

~~F.~~ G. During the inspection or investigation and in deciding whether to recommend and issue a citation, the director or the director's authorized representative and the commission may consider whether an employee has committed misconduct by violating the employer's policies, if any, regarding substance abuse while working, as evidenced by the results

of testing for substance abuse or other evidence of impairment while working.

~~G.~~ H. An employee of the division or the commission may not:

1. Before, during or after an inspection or investigation, communicate to an employer that the employer should not be represented by an attorney or that the employer may be treated more favorably by the division or the commission if the employer is not represented by an attorney.

2. Conduct an audio recording of an oral statement provided during an interview without the knowledge and consent of the person being interviewed. The employee of the division or the commission shall inform the person being interviewed of the person's right to receive a copy of the recorded oral statement within a reasonable time.

3. Obtain a written statement during an interview without informing the person of the person's right to receive a copy of the written statement within a reasonable time.

~~H.~~ I. An employee or a representative of employees who believes that a violation of a safety or health standard or regulation exists that threatens physical harm or that an imminent danger exists may request an investigation by giving notice to the director or the director's authorized representative of the violation or danger. Any notice shall be in writing, set forth with reasonable particularity the grounds for the notice and be signed by the employees or representative of the employees. On the request of the employee giving the notice, the employee's name and the names of other employees referred to in the notice shall not appear on any copy of the notice or any record published, released or made available. If on receipt of the notice the director determines that there are reasonable grounds to believe that the violation or danger exists, the director shall make an investigation in accordance with ~~the provisions of~~ this article as soon as practicable to determine if the violation or danger exists. If the director determines there are no reasonable grounds to believe that a violation or danger exists, the director shall notify the employees or representative of the employees in writing of the determination.

~~I.~~ J. Any person who violates any provision of this section is guilty of a class 2 misdemeanor.

~~J.~~ K. The commission, or the commission's authorized representative, in addition to initiating an action under subsection ~~H~~ I of this section, may file in the superior court in the county where the inspection was refused a verified complaint against an employer who violates subsection A of this section and request an injunction against continued refusal to permit an inspection.

Sec. 4. Section 23-418.01, Arizona Revised Statutes, is amended to read:

23-418.01. Additional penalty for wilful or repeated violation causing employee permanent disability or death covered by workers' compensation; payment to employee; enforcement

A. An additional penalty of twenty-five thousand dollars shall be assessed by the commission against an employer who is assessed a penalty under section 23-418, subsection A for each employee injury resulting in permanent disability or death if the commission finds all of the following:

1. The employee injury resulting in permanent disability or death was caused by the violation for which the employer is assessed a penalty under section 23-418, subsection A.

2. Compensation benefits are paid under chapter 6 of this title either:

(a) To the injured employee.

(b) In the event of death, To the employee's dependents. The requirement of this subdivision is satisfied if an employee did not have any dependents for which compensation benefits would have otherwise been paid under chapter 6 of this title.

3. The violation for which the employer is assessed a penalty under section 23-418, subsection A did not result from the injured or deceased employee's disobedience to specific instructions given to the employee regarding the job condition causing the employee's injury or death or relating to the safety standards applicable to that job condition.

B. Each additional penalty assessed under subsection A of this section shall be paid to the injured employee, or in the event of death, the employee's dependents or the employee's estate if the employee did not have any dependents, in addition to the benefits paid under chapter 6 of this title.

C. If an employer requests a hearing on an additional penalty assessed under this section, the commission ~~may either hear the issues raised pursuant to the hearing procedures under this article or may~~ SHALL refer the ~~matter to an administrative law judge assigned to hear matters relating to the workers' compensation claim under chapter 6 of this title. If the hearing procedures are under this article, the procedures for further review or appeal shall be in accordance with this article. If the hearing procedures are under chapter 6 of this title, the procedures for further review or appeal shall be in accordance with chapter 6, article 3 of this title~~ REQUEST FOR HEARING TO THE OFFICE OF ADMINISTRATIVE HEARINGS FOR DETERMINATION. An additional penalty under this section that becomes final shall operate as a judgment against the employer and may be enforced by either the commission or the injured employee, or in the case of death, the employee's dependents or the

employee's estate if the employee did not have any dependents, and all lawful remedies for the collection of judgments, including provisional remedies, shall be available. This section does not create any right of action or recovery against the employer's workers' compensation insurance carrier, and the additional penalty provided by this section is not a compensation benefit under chapter 6 of this title and is not subject to the payment of attorney fees.

Sec. 5. Section 23-420, Arizona Revised Statutes, is amended to read:

23-420. Hearing rights and procedures

A. Subject to ~~the provisions of~~ section 23-417, an interested party may request a hearing.

B. A request for hearing shall be made in writing, signed by or on behalf of the interested party and including ~~his~~ THE REQUESTING PARTY'S address AND E-MAIL ADDRESS, stating that a hearing is desired, and mailed OR E-MAILED to the commission. The request shall also state with particularity the violation, abatement period or penalty ~~which~~ THAT is being protested. Any violation, abatement period or penalty not protested within the time limit specified on the citation or penalty notice will be deemed admitted.

C. The commission shall refer the request for hearing to the ~~administrative law judge division~~ OFFICE OF ADMINISTRATIVE HEARINGS for determination as expeditiously as possible. The administrative law judge assigned to hear a case arising out of this article shall either be ~~a member of the administrative law judge division of the commission established pursuant to section 23-108.02 or an attorney appointed by the commission to hear specifically matters arising under this article~~ EMPLOYED OR CONTRACTED BY THE OFFICE OF ADMINISTRATIVE HEARINGS.

D. At least five days ~~prior to~~ BEFORE any hearing, notice of the time and place of ~~such~~ THE hearing shall be given to all parties in interest by mail at their last known address. The hearing shall be held in the county where the violation has occurred or such other place as selected by the administrative law judge.

E. A record of all proceedings at the hearing shall be kept but need not be transcribed unless a party requests a review of the decision of the administrative law judge.

F. Except as otherwise provided in this section and by rules of procedure promulgated by the commission pursuant to section 23-405, paragraph ~~5~~ 4, the administrative law judge is not bound by common law or statutory rules of evidence or by technical or formal rules of procedure and shall conduct the hearing in any manner that will achieve substantial justice.

G. An interested party ~~shall be~~ IS entitled to the issuance of subpoenas for the attendance of witnesses, parties and the production of reports, papers, contracts, books, accounts, documents and testimony ~~which~~

THAT are relevant and material to the issue. The commission OR THE ADMINISTRATIVE LAW JUDGE shall issue such subpoenas. The commission may initiate contempt proceedings against any person who refuses to comply with a duly issued subpoena, ~~upon~~ ON application to the superior court. Any person held in contempt may be punished by a fine of not ~~to exceed~~ MORE THAN one thousand dollars.

Sec. 6. Section 23-421, Arizona Revised Statutes, is amended to read:

23-421. Decisions of the administrative law judge

A. ~~Upon~~ ON the conclusion of any hearing, or ~~prior thereto~~ BEFORE THE CONCLUSION OF ANY HEARING with concurrence of the parties, the administrative law judge shall promptly and not later than thirty days after the matter is submitted for decision decide the matter in accordance with ~~his~~ THE ADMINISTRATIVE LAW JUDGE'S determination. ~~He~~ THE ADMINISTRATIVE LAW JUDGE may affirm, reverse or modify the disputed action and any penalty.

B. The decision shall be filed with the commission. A copy of the decision shall be sent immediately by mail OR E-MAIL to all parties in interest.

C. The decision is final unless within fifteen days after the date on which a copy of the decision is mailed OR E-MAILED to the parties one of the parties requests a review under section 23-423. The request for review shall be filed within fifteen days from the date of mailing OR E-MAILING of the decision. For the purposes of this section, "filed" means deposited in the United States mail, postage prepaid or actually received at an office of the industrial commission. The decision shall contain a statement explaining these rights and the rights of the parties under section 23-423.

Sec. 7. Section 23-422, Arizona Revised Statutes, is amended to read:

23-422. Review board

A. A review board is established within the commission to hear and rule on appeals of administrative law judge decisions generated in this article. The board shall consist of five members WHO ARE appointed by the governor~~. The occupational safety and health advisory committee shall submit to the governor a list of names of persons to be considered for appointment to the board~~ AND who by reason of training, education or experience are qualified to carry out the powers and duties of the board. ~~One member shall be a representative of management, one member shall be a representative of labor and three members shall be representatives of the general public.~~ The board shall elect a chairman from the board's membership.

B. Members of the board shall be appointed to five-year terms, except that of the members first appointed, one each shall serve for a term of one, two, three, four and five years. A vacancy occurring on the

board other than by expiration of a term shall be filled in the manner original appointments were made, for the unexpired portion of the term. Members of the board may be removed by the governor for inefficiency, neglect of duty, malfeasance or nonfeasance in office. The board shall meet as often as necessary to hold review hearings as provided in section 23-423, at times and places as the chairman may determine. ~~One member from management, one member from labor and one member from the general public~~ A QUORUM OF THE BOARD shall be present in order to conduct review hearings or other business. All decisions of the board shall be determined by a majority decision.

C. The commission shall employ a staff necessary for the efficient administration of the board's activities. All personnel of the board shall be under the supervision of the director of the commission and shall be paid from the general fund, subject to legislative appropriation.

D. Board members shall receive compensation pursuant to section 38-611, which shall be paid from the general fund, subject to legislative appropriation.

E. The monies appropriated to carry out the purposes of subsections C and D of this section shall be appropriated to the commission, shall not exceed twenty thousand dollars per year and are exempt from the provisions of section 35-190 relating to lapsing of appropriations. The monies shall be kept separate and apart from other monies of the commission and shall be available only to the board.

F. A member of the board shall not participate on a matter with which the member is personally associated. If a member is disqualified pursuant to this subsection or is unable to participate for any other reason on a particular matter, the governor shall appoint a person as a temporary member to participate in the hearing. ~~The occupational safety and health advisory committee shall submit to the governor a list of names of persons to be considered for a temporary appointment.~~ The person shall meet the qualifications of subsection A of this section~~, and shall be representative of the same area as that of the member for whom the person is serving as alternate~~.

Sec. 8. Section 23-422, Arizona Revised Statutes, as amended by section 7 of this act, is amended to read:

23-422. Review board

A. A review board is established within the commission to hear and rule on appeals of administrative law judge decisions generated in this article. The board shall consist of five members who are appointed by the governor. ~~and~~ THE OCCUPATIONAL SAFETY AND HEALTH ADVISORY COMMITTEE SHALL SUBMIT TO THE GOVERNOR A LIST OF NAMES OF PERSONS TO BE CONSIDERED FOR APPOINTMENT TO THE BOARD who by reason of training, education or experience are qualified to carry out the powers and duties of the board. ONE MEMBER SHALL BE A REPRESENTATIVE OF MANAGEMENT, ONE MEMBER SHALL BE A REPRESENTATIVE OF LABOR AND THREE MEMBERS SHALL BE REPRESENTATIVES OF THE

GENERAL PUBLIC. The board shall elect a chairman from the board's membership.

B. Members of the board shall be appointed to five-year terms, except that of the members first appointed, one each shall serve for a term of one, two, three, four and five years. A vacancy occurring on the board other than by expiration of a term shall be filled in the manner original appointments were made, for the unexpired portion of the term. Members of the board may be removed by the governor for inefficiency, neglect of duty, malfeasance or nonfeasance in office. The board shall meet as often as necessary to hold review hearings as provided in section 23-423, at times and places as the chairman may determine. ~~A quorum of the board~~ ONE MEMBER FROM MANAGEMENT, ONE MEMBER FROM LABOR AND ONE MEMBER FROM THE GENERAL PUBLIC shall be present in order to conduct review hearings or other business. All decisions of the board shall be determined by a majority decision.

C. The commission shall employ a staff necessary for the efficient administration of the board's activities. All personnel of the board shall be under the supervision of the director of the commission and shall be paid from the general fund, subject to legislative appropriation.

D. Board members shall receive compensation pursuant to section 38-611, which shall be paid from the general fund, subject to legislative appropriation.

E. The monies appropriated to carry out the purposes of subsections C and D of this section shall be appropriated to the commission, shall not exceed twenty thousand dollars per year and are exempt from the provisions of section 35-190 relating to lapsing of appropriations. The monies shall be kept separate and apart from other monies of the commission and shall be available only to the board.

F. A member of the board shall not participate on a matter with which the member is personally associated. If a member is disqualified pursuant to this subsection or is unable to participate for any other reason on a particular matter, the governor shall appoint a person as a temporary member to participate in the hearing. THE OCCUPATIONAL SAFETY AND HEALTH ADVISORY COMMITTEE SHALL SUBMIT TO THE GOVERNOR A LIST OF NAMES OF PERSONS TO BE CONSIDERED FOR A TEMPORARY APPOINTMENT. The person shall meet the qualifications of subsection A of this section, AND SHALL BE REPRESENTATIVE OF THE SAME AREA AS THAT OF THE MEMBER FOR WHOM THE PERSON IS SERVING AS ALTERNATE.

Sec. 9. Section 23-423, Arizona Revised Statutes, is amended to read:

23-423. Review board rights and procedures

A. A request for review to the review board shall be filed with the commission within fifteen days ~~from~~ AFTER the date the decision was mailed OR E-MAILED to the parties and copies of the request shall be mailed to all other parties to the proceeding before the administrative law

judge. For the purposes of this section, "filed" means deposited in the United States mail, postage prepaid or actually received by the commission.

B. The request for review shall state the grounds for review and whether oral argument is requested.

C. When review has been requested, the record of such oral proceedings at the hearing before the administrative law judge for purposes of the review shall be transcribed at the expense of the party requesting review. The record shall be certified to be true and correct by the ~~administrative law judge~~ OFFICE OF ADMINISTRATIVE HEARINGS.

D. THE BOARD SHALL GIVE THE PARTIES notice of review ~~shall be given the parties~~ by mail ~~by the board~~ OR E-MAIL.

E. If oral argument is requested, a hearing date shall be established and notice of ~~such~~ THE HEARING DATE will be sent with the notice of review to the parties.

F. The review of the board shall be based ~~upon~~ ON the record submitted to it under ~~the provisions of~~ subsection C OF THIS SECTION and such oral argument as may be requested and received. If the board determines that a case has been improperly, incompletely or otherwise insufficiently developed or heard by the administrative law judge, it may remand the case to the administrative law judge for further evidence taking, correction or other necessary action.

G. The board may affirm, reverse, modify or supplement the decision of the administrative law judge and make such disposition of the case as it determines to be appropriate. ~~It~~ THE BOARD shall make a decision within thirty days after review has been submitted.

H. The decision of the board shall be filed with the commission and a copy ~~thereof~~ OF THE DECISION sent by mail OR E-MAIL to the parties.

~~1.~~ All decisions of the review board shall be in writing.

~~2.~~ Decisions of the review board shall be made by a majority vote of the review board.

~~3.~~ A decision of the review board is binding ~~upon~~ ON the director and the division with respect to the parties involved in the particular appeal. The director shall have the right to seek judicial review of a review board decision irrespective of whether or not ~~he~~ THE DIRECTOR appeared or participated in the appeal to the review board.

I. The decision of the board is final unless within ten days after the date of service of copies of such decision on the parties, one of the parties applies to the court of appeals for a writ of certiorari to review the lawfulness of the decision. A copy of such application shall be forthwith transmitted to the clerk of the court, to the review board, to the commission and to the other parties and within ten days therefrom, the commission shall certify the record, proceedings and evidence before the administrative law judge and the review board to the court of appeals. ~~Upon~~ ON such filing, the court shall have jurisdiction of the proceedings

and of the question determined therein, and shall have power to make and enter ~~upon~~ ON the pleadings, testimony and proceedings set forth in such record a decree affirming, modifying or setting aside in whole or in part, the order of the review board and enforcing the same to the extent that such order is affirmed or modified. The commencement of proceedings under this subsection ~~shall~~ DOES not, unless ordered by the court, operate as a stay of the order of the review board. No objection that has not been urged before the review board shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the review board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any party ~~shall apply~~ APPLIES to the court for leave to adduce additional evidence and ~~shall show~~ SHOWS to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the administrative law judge, the court may order such additional evidence to be taken before the administrative law judge and to be made a part of the record. Petitions filed under this subsection shall be heard expeditiously and the decision of the review board shall contain a statement of this right of appeal.

Sec. 10. Title 23, chapter 2, article 10, Arizona Revised Statutes, is amended by adding section 23-432, to read:

23-432. Voluntary protection and other model system implementation programs; program termination

A. THE DIVISION SHALL ADOPT DEFINITIONS, REGULATIONS AND STANDARDS NECESSARY FOR THE OPERATION OF THE PROGRAM IN A MANNER THAT WILL PROMOTE SAFE AND HEALTHY WORKPLACES THROUGHOUT THIS STATE. STANDARDS FOR THE PROGRAM SHALL INCLUDE THE FOLLOWING REQUIREMENTS FOR PARTICIPATION:

1. UPPER MANAGEMENT LEADERSHIP AND ACTIVE AND MEANINGFUL EMPLOYEE INVOLVEMENT.

2. SYSTEMATIC ASSESSMENT OF OCCUPATIONAL HAZARDS.

3. COMPREHENSIVE HAZARD PREVENTION, MITIGATION AND CONTROL PROGRAMS.

4. EMPLOYEE SAFETY AND HEALTH TRAINING.

5. SAFETY AND HEALTH PROGRAM EVALUATION BY THE DIVISION TO ENSURE THAT A WORKPLACE CONTINUOUSLY MEETS THE STANDARDS AND REGULATIONS.

B. APPLICATIONS FOR PARTICIPATION IN THE PROGRAM SHALL BE SUBMITTED BY THE WORKPLACE'S MANAGEMENT. APPLICATIONS SHALL INCLUDE DOCUMENTATION ESTABLISHING TO THE SATISFACTION OF THE DIVISION THAT THE EMPLOYER MEETS ALL REQUIREMENTS FOR PROGRAM PARTICIPATION.

C. THE DIVISION SHALL PROVIDE FOR ON-SITE EVALUATIONS BY THE DIVISION'S CONSULTATION SECTION OF EACH WORKPLACE THAT HAS APPLIED TO PARTICIPATE IN THE PROGRAM TO DETERMINE THAT THE APPLICANT'S WORKPLACE COMPLIES WITH THE REQUIREMENTS FOR PROGRAM PARTICIPATION.

D. A WORKPLACE'S CONTINUED PARTICIPATION IN THE PROGRAM IS CONDITIONED ON COMPLIANCE WITH THE REQUIREMENTS FOR PROGRAM PARTICIPATION, AS DETERMINED BY PERIODIC, PLANNED ON-SITE EVALUATIONS BY THE DIVISION.

E. DURING PERIODS IN WHICH A WORKPLACE IS A PROGRAM PARTICIPANT, THE WORKPLACE IS EXEMPT FROM INSPECTIONS OR INVESTIGATIONS UNDER SECTION 23-408. THIS EXCEPTION DOES NOT APPLY TO INSPECTIONS OR INVESTIGATIONS OF THE WORKPLACE ARISING FROM COMPLAINTS, REFERRALS, FATALITIES, CATASTROPHES, NONFATAL ACCIDENTS OR SIGNIFICANT TOXIC CHEMICAL RELEASES.

F. ANY WORKPLACE THAT WAS A PARTICIPANT IN THE UNCODIFIED VOLUNTARY PROTECTION PROGRAM OR ANY OTHER PROGRAM THAT IMPLEMENTS A MODEL SYSTEM CONDUCTED BY THE DIVISION BEFORE THE EFFECTIVE DATE OF THIS SECTION MAY CONTINUE AS A PARTICIPANT IN THE PROGRAM ESTABLISHED PURSUANT TO THIS SECTION. BEGINNING ON THE EFFECTIVE DATE OF THIS SECTION, THE CONTINUED PARTICIPATION BY SUCH A WORKPLACE IN THE PROGRAM IS CONDITIONED ON THE WORKPLACE'S COMPLIANCE WITH THE REQUIREMENTS FOR PROGRAM PARTICIPATION ADOPTED BY THE DIVISION.

G. THE PROGRAM ESTABLISHED BY THIS SECTION ENDS ON JULY 1, 2027 PURSUANT TO SECTION 41-3102.

Sec. 11. Heading change

The article heading of title 23, chapter 2, article 11, Arizona Revised Statutes, is changed from "SAFETY CONDITIONS FOR BOILERS AND LINED HOT WATER STORAGE HEATERS" to "SAFETY CONDITIONS FOR BOILERS, PRESSURE VESSELS AND LINED HOT WATER HEATERS".

Sec. 12. Section 23-471, Arizona Revised Statutes, is amended to read:

23-471. Definitions

In this article, unless the context otherwise requires:

1. "Authorized representative" means the boiler chief and boiler inspector employed by the division.

2. "BOILER" MEANS A CLOSED VESSEL IN WHICH WATER OR OTHER LIQUID IS HEATED, STEAM OR VAPOR IS GENERATED OR STEAM OR VAPOR IS SUPERHEATED, OR ANY COMBINATION THEREOF, UNDER PRESSURE OR VACUUM FOR A USE THAT IS EXTERNAL TO ITSELF, BY THE DIRECT APPLICATION OF HEAT FROM THE COMBUSTION OF FUELS OR FROM ELECTRICITY.

~~2.~~ 3. "Certificate" means a certificate of competency.

~~3.~~ 4. "Certificate inspection" means an internal inspection, when construction permits, otherwise it means as complete an inspection as possible.

~~4.~~ 5. "Commission" means the industrial commission of Arizona.

~~5.~~ 6. "Director" means the director of the division of occupational safety and health.

~~6.~~ 7. "Division" means the division of occupational safety and health of the commission.

~~7.~~ 8. "Heating boilers" means a steam or vapor boiler operating at a pressure not exceeding fifteen pounds per square inch or a hot water

boiler operating at a pressure not exceeding one hundred sixty pounds per square inch or a temperature not exceeding two hundred fifty degrees Fahrenheit.

~~8.~~ 9. "High temperature water boiler" means a water boiler intended for operation at pressures in excess of one hundred sixty pounds per square inch or temperatures in excess of two hundred fifty degrees Fahrenheit.

~~9.~~ 10. "Interested party" means the commission, agents of the commission and any owner or operator who has been issued a notice of violation.

~~10.~~ 11. "Lined hot water ~~storage~~ heater" means a fired lined water heater with linings providing corrosion resistance for supplying potable hot water for commercial purposes. Lined hot water ~~storage~~ heaters are exempted when none of the following limitations are exceeded:

(a) Heat input of two hundred thousand British thermal units per hour.

(b) Water temperature of two hundred ten degrees Fahrenheit.

(c) Nominal water-containing capacity of one hundred twenty gallons.

~~11.~~ 12. "Owner" or "Operator" means any individual or type of organization, including this state and all political subdivisions of this state, ~~who~~ THAT has title to or controls, or has the duty to control, the operation of one or more boilers, PRESSURE VESSELS or lined hot water ~~storage~~ heaters.

~~12.~~ 13. "Power boiler" means a boiler in which steam or other vapor is generated at a pressure more than fifteen pounds per square inch.

14. "PRESSURE VESSEL" MEANS A CONTAINER FOR THE CONTAINMENT OF PRESSURE, EITHER INTERNAL OR EXTERNAL. THE PRESSURE MAY BE OBTAINED FROM AN EXTERNAL SOURCE, OR BY THE APPLICATION OF HEAT FROM A DIRECT OR INDIRECT SOURCE, OR ANY COMBINATION THEREOF.

~~13.~~ 15. "Process boiler" means a heating boiler or a power boiler used for processing purposes where the ~~make up~~ MAKE-UP water exceeds ten ~~per cent~~ PERCENT.

Sec. 13. Section 23-473, Arizona Revised Statutes, is amended to read:

23-473. <u>Owner's and operator's duty</u>

Every owner or operator of any boiler, PRESSURE VESSEL or lined hot water ~~storage~~ heater shall:

1. Furnish, maintain and provide safe and adequate boilers, PRESSURE VESSELS or lined hot water ~~storage~~ heaters.

2. Comply with all standards and regulations issued pursuant to this article.

Sec. 14. Section 23-475, Arizona Revised Statutes, is amended to read:

23-475. Duties of division

The division shall:

1. Certify special inspectors as provided in section 23-485.

2. Inspect boilers, PRESSURE VESSELS and lined hot water ~~storage~~ heaters under this article, except that beginning on July 1, 2017 the division may not inspect boilers, PRESSURE VESSELS and lined hot water ~~storage~~ heaters.

3. Establish a schedule to require regular boiler, PRESSURE VESSEL and lined hot water ~~storage~~ heater inspections.

4. Recommend standards, regulations and amendments to the standards and regulations to the commission for approval or disapproval.

5. Enforce, under section 23-478, all standards and regulations adopted by the commission.

Sec. 15. Section 23-478, Arizona Revised Statutes, is amended to read:

23-478. Enforcement

A. If the division, following an inspection or investigation determines that there is reasonable cause to believe that there exists a violation of a standard or regulation the division shall issue a notice of violation directing any repairs, improvements, changes or additions necessary to eliminate the hazard. Each notice of violation shall be in writing, delivered either by mail or in person and shall contain the following:

1. A particular description of the nature of the violation, including a reference to the provision of this article or of any standard or regulation alleged to have been violated.

2. A reasonable time for the abatement of the violation.

B. Each notice of violation issued pursuant to this section or a copy or copies of such notice of violation shall be prominently posted at or near each place a violation referred to in the notice of violation existed.

C. If in the opinion of the director or the director's authorized representative the continued operation of the defective boiler, PRESSURE VESSEL or lined hot water ~~storage~~ heater constitutes an immediate danger to the safety of the occupants of the establishment or the persons operating such boiler, PRESSURE VESSEL or lined hot water ~~storage~~ heater the director or director's authorized representative may condemn such device and require ~~it~~ THE BOILER, PRESSURE VESSEL OR LINED HOT WATER HEATER to be returned to a condition allowing safe operation before ~~its~~ use OF THE BOILER, PRESSURE VESSEL OR LINED HOT WATER HEATER is resumed.

D. ~~Upon~~ ON failure of an owner or operator to comply with either the requirements of a notice of violation issued pursuant to subsection A OF THIS SECTION or condemnation pursuant to this subsection, the

commission may file an action in the superior court ~~of~~ IN the county where the violation occurred to enjoin the owner or operator from engaging in further acts in violation of the requirements of ~~this~~ THE notice of violation or the condemnation. Any person found to be in contempt of an injunctive order of the court shall be fined not less than fifty nor more than three hundred dollars with each day of violation constituting a separate contempt.

Sec. 16. Section 23-485, Arizona Revised Statutes, is amended to read:

23-485. Special inspectors; civil liability

A. The division, ~~upon~~ ON the request of any company ~~authorized to insure against loss from explosion of boilers or lined hot water storage heaters in this state~~ THAT HAS RECEIVED A CERTIFICATE OF ACCREDITATION FROM EITHER THE NATIONAL BOARD OF BOILER AND PRESSURE VESSEL INSPECTORS OR THE AMERICAN SOCIETY OF MECHANICAL ENGINEERS AS AN AUTHORIZED INSPECTION AGENCY OR AN OWNER-USER INSPECTION ORGANIZATION, may issue to any inspector of that company a certificate as a special inspector. ~~The division may also, upon the request of any company operating boilers or lined hot water storage heaters in this state, issue to any inspector of the company a certificate as a special inspector.~~ Before receiving a certificate, the inspector must ~~satisfactorily pass a written examination given by the division~~ DEMONSTRATE THAT THE INSPECTOR HOLDS A CURRENT COMMISSION ISSUED BY THE NATIONAL BOARD OF BOILER AND PRESSURE VESSEL INSPECTORS.

~~B. A certificate as a special inspector in this state shall be issued, in lieu of such examination, if the inspector holds a certificate of competency as an inspector of boilers or lined hot water storage heaters for a state that has a standard of examination substantially equal to that of this state or a commission as an inspector of boilers and pressure vessels issued by the national board of boiler and pressure vessel inspectors.~~

~~C.~~ B. A certificate as a special inspector for a company operating boilers, PRESSURE VESSELS or lined hot water ~~storage~~ heaters in this state shall be issued only if, in addition to meeting the requirements of this section, the inspector is employed full time by such company and the inspector's duties include making inspections of boilers, PRESSURE VESSELS or lined hot water ~~storage~~ heaters to be used by such company and not for resale.

~~D.~~ C. Each company employing such special inspectors, within sixty days ~~following~~ AFTER each boiler ~~certificate~~, PRESSURE VESSEL OR LINED HOT WATER HEATER inspection made by the inspectors, shall file a report of the inspection with the division ~~upon~~ ON appropriate forms OR MAKE ENTRY INTO THE DIVISION'S COMPUTER DATABASE. ~~Reports of external inspections shall not be required except when such inspections disclose that the boiler or lined hot water storage heater is in a dangerous condition.~~

~~E.~~ D. All insurance companies shall notify the division of all boilers, PRESSURE VESSELS or lined hot water ~~storage~~ heaters ~~upon~~ ON which insurance is written. All insurance companies shall also notify the division of all boilers, PRESSURE VESSELS or hot water ~~storage~~ heaters ~~upon~~ ON which insurance is cancelled, not renewed or suspended because of unsafe conditions.

~~F.~~ E. The furnishing of ~~boiler~~ A certificate ~~inspections~~ INSPECTION, as authorized by the commission pursuant to section 23-475, that ~~are~~ IS conducted incidental to the issuance or renewal of boiler and machinery insurance OR A CONTRACTUAL CERTIFICATE INSPECTION when performed in accordance with the standards and regulations adopted by the commission shall not subject an insurer, A NONINSURER, whether domestic or foreign, OR A CONTRACTED INSPECTION ORGANIZATION, its agents or its employees to liability for damages for any act or omission in the course of performing inspections as provided by this section. This ~~section~~ SUBSECTION does not apply if the gross negligence of the insurer, NONINSURER OR CONTRACTED INSPECTION ORGANIZATION, its agent or its employee created the condition that was the proximate cause of the injury, death or loss.

Sec. 17. Section 23-486, Arizona Revised Statutes, is amended to read:

23-486. Boiler advisory board; members; terms; meetings

A. The boiler advisory board is established to assist the commission in drafting standards and regulations for boilers, PRESSURE VESSELS and lined hot water ~~storage~~ heaters. The boiler advisory board consists of the following members who are appointed by the commission:

1. One member who represents the boiler, PRESSURE VESSEL or lined hot water ~~storage~~ heater manufacturer industry.

2. One member who represents a public utility.

3. One member who represents the insurance industry.

4. One member who is an owner or operator of a boiler, PRESSURE VESSEL or lined hot water ~~storage~~ heater.

5. One member who is a licensed contractor.

B. The initial members of the boiler advisory board shall assign themselves by lot to terms of one or two years in office. All subsequent members serve three-year terms of office. The chairperson shall notify the commission of these appointments.

C. The boiler advisory board shall annually elect a chairperson from its members.

D. The boiler advisory board shall meet at least annually and on the call of the commission. The commission shall determine the time and place of boiler advisory board meetings.

Sec. 18. Section 23-488, Arizona Revised Statutes, is amended to read:

23-488. Division inspection service

A. The division may enter into agreements to provide inspection services during the manufacture, assembly, erection, or repair of boilers, PRESSURE VESSELS, lined hot water ~~storage~~ heaters or any appurtenant components to such boilers, PRESSURE VESSELS or heaters whenever such inspections are requested by holders of authorized symbols of American society of mechanical engineers or the national board of boiler and pressure vessel inspectors.

B. The commission, through the division, may fix and collect inspection fees ~~which~~ THAT shall be determined on the basis of an hourly rate for inspection plus reimbursement for actual expenses incurred, provided that no hourly rate for inspection shall exceed thirty dollars per hour.

C. The commission shall deposit, pursuant to sections 35-146 and 35-147, all fees received in the state general fund.

Sec. 19. Section 23-491, Arizona Revised Statutes, is amended to read:

23-491. Definitions

In this article, unless the context otherwise requires:

1. "Authorized representative" means the elevator chief and elevator inspector employed by the division.

~~2. "Board" means the elevator advisory board established to assist the commission in drafting standards and regulations.~~

~~3.~~ 2. "Certificate" means a certificate of inspection issued by the division.

~~4.~~ 3. "Commission" means the industrial commission of Arizona.

~~5.~~ 4. "Conveyance" means an elevator, dumbwaiter, escalator, moving walk, manlift, personnel hoist, material hoist, stage lift and special purpose personnel elevator, excluding conveyances located at mines and subject to regulation and inspection by the state mine inspector pursuant to title 27, chapter 3.

~~6.~~ 5. "Director" means the director of the division of occupational safety and health.

~~7.~~ 6. "Division" means the division of occupational safety and health of the industrial commission.

~~8.~~ 7. "Dumbwaiter" means a hoisting and lowering mechanism with a car of limited capacity and size that moves in guides in a substantially vertical direction and that is used exclusively for carrying material.

~~9.~~ 8. "Elevator" means a hoisting and lowering mechanism equipped with a car or platform that moves in guides in substantially vertical direction and that serves two or more floors of a building or structure.

~~10.~~ 9. "Elevator company" means a person that is engaged in the business of erecting, constructing, installing, altering, servicing, repairing or maintaining conveyances.

~~11.~~ 10. "Escalator" means a power driven, inclined, continuous stairway used for raising or lowering passengers.

~~12.~~ 11. "Interested party" means the commission and its agents and the owner or operator who has been issued a correction order.

~~13.~~ 12. "Manlift" means a device consisting of a power driven endless belt moving in one direction only and provided with steps or platforms and attached handholds for the transportation of personnel from floor to floor.

~~14.~~ 13. "Material hoist" means a hoist for raising and lowering materials only and prohibiting the hoisting of persons.

~~15.~~ 14. "Moving walk" means a type of passenger carrying device on which passengers stand or walk and in which the passenger carrying surface remains parallel to its direction of motion and is uninterrupted.

~~16.~~ 15. "Owner" or "operator" means an individual or organization including this state and all political subdivisions of this state who has title to, controls or has the duty to control the operation of one or more conveyances, but shall not include an individual or organization engaged in mining or metallurgical operations whose operation is subject to regulation and inspection by the state mine inspector pursuant to title 27, chapter 3.

~~17.~~ 16. "Personnel hoist" means a mechanism for use in connection with the construction, alteration, maintenance or demolition of a building, structure or other work, used for hoisting and lowering workers and materials and equipped with a car that moves on guide members during its vertical movement. The term includes a hoistway of a personnel hoist.

~~18.~~ 17. "Private elevator inspector" means an individual who is authorized by the commission under section 23-491.16 to conduct inspections under this article.

~~19.~~ 18. "Special purpose personnel elevator" means a passenger, hand powered, counterweighted device or an electric powered device that travels vertically in guides and that serves two or more landings.

~~20.~~ 19. "Stage lift" means a hoisting and lowering mechanism equipped with a platform that moves in guides in a substantially vertical direction and that serves one or more landings.

Sec. 20. Section 23-491.04, Arizona Revised Statutes, is amended to read:

23-491.04. <u>Commission powers and duties</u>

A. The commission shall:

1. Administer ~~the provisions of~~ this article through the division of occupational safety and health.

~~2. Establish an elevator advisory board to assist the commission in drafting standards and regulations.~~

~~3.~~ 2. Promulgate standards and regulations pursuant to section ~~23-491.05~~ 23-491.06 as required and promulgate such other rules and regulations and exercise such other powers as are necessary to carry out ~~the provisions of~~ this article.

B. The commission ~~may~~, by rule and regulation, MAY set fees not to exceed the actual cost for inspections performed pursuant to this article.

Sec. 21. Section 23-491.06, Arizona Revised Statutes, is amended to read:

23-491.06. Development of standards and regulations

A. Safety standards and regulations shall be formulated in the following manner:

1. The division shall either propose adoption of national ~~concensus~~ CONSENSUS standards or federal standards or draft such regulations as it considers necessary after conducting sufficient investigations through the division's employees and through consultation with ~~the board and~~ other persons knowledgeable in the business for which the standards or regulations are being formulated.

2. Proposed standards or regulations, or both, shall be submitted to the commission for ~~its~~ approval.

B. Any person who may be adversely affected by a standard or regulation issued under this article may, at any time within sixty days after such standard or regulation is promulgated by the commission, file a complaint challenging the validity of such standard or regulation with the superior court ~~of~~ IN the county in which the person resides or has ~~his~~ THE PERSON'S principal place of business, for a judicial review of such standard or regulation. The filing of ~~such~~ a complaint shall not, unless otherwise ordered by the court, operate as a stay of the standard or regulation. The determinations of the commission shall be conclusive if supported by substantial evidence in the record considered as a whole.

C. In case of conflict between standards and regulations, the regulations shall take precedence.

Sec. 22. Conditional enactment; notice

A. Section 23-422, Arizona Revised Statutes, as amended by section 8 of this act, becomes effective only if on or before December 31, 2019 the federal occupational safety and health administration publishes in the federal register pursuant to 29 Code of Federal Regulations section 1902.23 a final decision rendered under 29 Code of Federal Regulations section 1902.22 and pursuant to 29 Code of Federal Regulations part 1953 to reject the changes to this state's occupational safety and health plan prescribed in section 23-422, Arizona Revised Statutes, as amended by section 7 of this act, that results in the exclusion of the changes from this state's federally approved occupational safety and health plan.

B. The director of the industrial commission of Arizona shall notify in writing the director of the Arizona legislative council on or before April 1, 2020 either:

1. Of the date on which the condition in subsection A of this section was met.

2. That the condition was not met.

APPROVED BY THE GOVERNOR APRIL 10, 2017.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 10, 2017.

Passed the House March 21, 2017,

by the following vote: _____ Ayes,

_____ Nays, FAILED _____ Not Voting

_____
Speaker of the House

Jim Drake
_____
Chief Clerk of the House

Passed the Senate February 23, 2017,

by the following vote: 30 Ayes,

0 Nays, 0 Not Voting

Steve B Yarbrough
_____
President of the Senate

Susan Reeves
_____
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR
This Bill was received by the Governor this

6th day of April, 2017,

at 10:44 o'clock A. M.

_____
Secretary to the Governor

Approved this _____ day of

_____, 20_____,

at _____ o'clock _____ M.

_____
Governor of Arizona

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

S.B. 1478

Passed the House April 5, 20 17

by the following vote: 35 Ayes,

24 Nays, 1 Not Voting

Speaker of the House

☐ Pro Tempore

Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

6th day of April, 20 17

at 10:44 o'clock A. M.

Secretary to the Governor

Approved this 10th day of

April, 2017

at 10:54 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 10 day of April, 20 17

at 5:13 o'clock P M.

Michele Reagan

Secretary of State

ON RECONSIDERATION
S.B. 1478