

State of Arizona
Senate
Fifty-third Legislature
First Regular Session
2017

Senate Engrossed
FILED
MICHELE REAGAN
SECRETARY OF STATE

CHAPTER 15
SENATE BILL 1166

AN ACT

AMENDING SECTIONS 23-724, 23-726, 23-738, 23-738.01 AND 23-787, ARIZONA
REVISED STATUTES; RELATING TO EMPLOYMENT SECURITY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 23-724, Arizona Revised Statutes, is amended to
3 read:

4 23-724. Liability determinations; review; finality

5 A. If the department makes a determination, which determination
6 shall be made either on the motion of the department or on application of
7 an employing unit, that an employing unit constitutes an employer as
8 defined in section 23-613 or that services performed for or in connection
9 with the business of an employing unit constitute employment as defined in
10 section 23-615 that is not exempt under section 23-617 or that
11 remuneration for services constitutes wages as defined in section 23-622,
12 the determination ~~shall become~~ BECOMES final with respect to the employing
13 unit ~~sixty~~ THIRTY days after written notice is served personally, by
14 electronic transmission or by certified mail if the determination was made
15 on the basis of section 23-613.01, or by first class mail if the
16 determination was made by any other basis, addressed to the last known
17 address of the employing unit, unless within such time the employing unit
18 files a written request for reconsideration.

19 B. If a request for reconsideration is filed as prescribed in
20 subsection A of this section, a reconsidered determination shall be made.
21 The reconsidered determination ~~shall become~~ BECOMES final with respect to
22 the employing unit thirty days after written notice of the reconsidered
23 determination is served personally, by electronic transmission or by mail
24 addressed to the last known address of the employing unit, unless within
25 such time the employing unit files with the appeals board a written
26 petition for hearing or review. The department may for good cause extend
27 the period within which the written petition is to be submitted. If the
28 reconsidered determination is appealed to the appeals board and the
29 decision by the appeals board is that the employing unit is liable, the
30 employing unit shall submit all required contribution and wage reports to
31 the department within forty-five days after the decision by the appeals
32 board.

33 C. On an employer's written request and the submission of pertinent
34 information to the department, the department shall, or on its own motion
35 may, consider whether a determination, reconsidered determination or
36 decision that has become final should be revised. Revision shall be
37 granted if either:

38 1. There has been a substantial and material change in the facts on
39 which the determination, reconsidered determination or decision relied.

40 2. There has been a change in the law or interpretation of the law
41 that warrants a revised determination, reconsidered determination or
42 decision.

43 D. The effective date of a revision under subsection C of this
44 section is either:

1 1. The date on which the change occurred if the employer's request
2 with the pertinent information is filed ~~no~~ NOT later than the last day of
3 the month immediately subsequent to the calendar quarter in which the
4 change occurred.

5 2. The first day of the calendar quarter in which the employer
6 files the request and submits the pertinent information unless the
7 employer demonstrates to the satisfaction of the department that good
8 cause exists for the failure to notify the department within the period
9 prescribed by paragraph 1 of this subsection of the occurrence of the
10 change warranting the revision. In the event that good cause is
11 demonstrated, the effective date ~~shall be~~ IS the date of the change.

12 E. A refusal to grant relief under subsection C of this section may
13 not be appealed unless within thirty days the employer appeals the refusal
14 to the appeals board. The employer's appeal shall be filed either
15 electronically or in writing. Notwithstanding any other provision of law
16 and pursuant to the appeal, the appeals board may initiate hearings to
17 obtain information and issue a decision as to whether the relief requested
18 in subsection C of this section should be granted. Thereafter, the
19 appeals board shall issue a decision in the matter. The decision of the
20 appeals board may not be appealed with respect to the employing unit
21 unless a request for judicial review is filed within the time and in the
22 manner provided in section 41-1993.

23 F. The determination of the department or decision of the appeals
24 board, together with the record, shall be admissible in any subsequent
25 judicial proceeding involving liability for contributions. A
26 determination or decision that an employing unit is liable that has become
27 final shall be conclusive and binding on the employing unit and shall not
28 be reconsidered in proceedings brought before the department or a hearing
29 officer.

30 G. Any determination issued on the basis of section 23-613.01
31 pursuant to subsection A of this section and any reconsidered
32 determination issued pursuant to subsection B of this section and any
33 contribution rate redetermination or denial issued pursuant to section
34 23-732, subsection A shall contain the following:

35 1. The facts considered and the facts relied on in making the
36 determination.

37 2. The specific statutes, regulations or other authority relied on
38 in making the determination.

39 3. The reasoning applied in making the determination.

40 4. The appeal rights related to the determination and the time
41 period after which the determination becomes final.

42 H. If any determination covered by subsection G of this section is
43 defective because ~~it~~ THE DETERMINATION fails to meet the requirements of
44 subsection G of this section, the defect may be cured by issuance of a
45 corrected, amended or new determination. If a defect is alleged and

1 specified in writing within the period for appeal, all time periods
2 applicable to the determination are suspended pending the curative action.

3 I. This section does not preclude the department from at any time
4 correcting clerical errors that have occurred in the administration of
5 this chapter.

6 J. A determination, reconsidered determination, revision or refusal
7 to grant relief under this section may be served by electronic means if
8 the party being served consents in writing to service by electronic means.
9 Service by electronic means is deemed complete on transmission.

10 Sec. 2. Section 23-726, Arizona Revised Statutes, is amended to
11 read:

12 23-726. Contributions; voluntary payment

13 A. Contributions shall accrue and become payable by each employer
14 for each calendar year in which the employer is subject to this chapter
15 with respect to wages for employment. The contributions shall become due
16 and be paid by each employer to the commission for the fund in accordance
17 with such regulations as the commission prescribes, and shall not be
18 deducted, in whole or in part, from the wages of individuals in the
19 employer's employ.

20 B. In the payment of contributions, a fractional part of a cent
21 shall be disregarded unless it amounts to one-half cent or more in which
22 case it shall be increased to one cent. From and after December 31, 2004,
23 the payment of contributions or job training employer taxes is not
24 required if the quarterly amount of the contributions and taxes is less
25 than ten dollars.

26 C. An employer may make voluntary payments in addition to the
27 contributions required under this chapter that shall be credited to the
28 employer's account in accordance with commission regulation. The
29 voluntary payments shall be included in the employer's account as of the
30 employer's most recent computation date if they are made on or before the
31 following ~~January 31~~ FEBRUARY 28. Voluntary payments when accepted from
32 an employer will not be refunded in whole or in part.

33 D. The payment of contributions is not required if the quarterly
34 amount of the contribution or taxes is less than ten dollars.

35 Sec. 3. Section 23-738, Arizona Revised Statutes, is amended to
36 read:

37 23-738. Delinquency assessments; interest and penalties;
38 petition for reassessment

39 A. If an employer neglects or refuses to make a return as required
40 by this chapter, the department shall make an estimate based ~~upon~~ ON
41 information in ~~its~~ THE DEPARTMENT'S possession of the amount of
42 contributions due from the employer for the period for which ~~the~~ THE
43 EMPLOYER failed to make a return, and shall assess the estimated amount
44 against the delinquent employer. The department shall add to the
45 delinquency assessment made under this section the penalty provided in

1 section 23-723 and interest as prescribed by section 23-736. If the
2 neglect or refusal to file a return is due to fraud or an intent to evade
3 payment of contributions, there shall be added to the amount due a penalty
4 equal to twenty-five ~~per cent~~ PERCENT thereof. The department shall
5 promptly notify the delinquent employer of any estimate.

6 B. An employer against whom any delinquency assessment is made may
7 petition for reassessment within ~~fifteen~~ THIRTY days after written notice
8 of the assessment is served personally or sent by certified mail to the
9 employer's last known address. If the petition for reassessment is not
10 filed within ~~fifteen~~ THIRTY days the amount of the assessment shall become
11 final and the lien imposed by section 23-745 ~~shall attach~~ ATTACHES.

12 Sec. 4. Section 23-738.01, Arizona Revised Statutes, is amended to
13 read:

14 23-738.01. Deficiency assessment; petition for reassessment

15 A. If the department finds through its audit or claims-taking
16 procedures that the return filed by an employer is deficient, the
17 department may compute the amount required to be paid on the basis of any
18 information in ~~its~~ THE DEPARTMENT'S possession and make an assessment of
19 the amount of the deficiency. The department shall add to the deficiency
20 assessment made under this section, subject to waiver for good cause
21 shown, a penalty of one-tenth of one ~~per cent~~ PERCENT of the difference
22 between the wages paid during the quarter and the wages reported during
23 the quarter, but not more than two hundred dollars and interest as
24 prescribed by section 23-736. If the deficiency is due to fraud or an
25 intent to evade payment of contributions, the department shall add to the
26 amount due a penalty equal to twenty-five ~~per cent~~ PERCENT of the amount
27 due. The department shall promptly notify the employer of any deficiency.

28 B. An employer against whom a deficiency assessment is made may
29 petition for reassessment within ~~fifteen~~ THIRTY days after written notice
30 of the assessment is served personally or sent by certified mail to the
31 employer's last known address. If the petition for reassessment is not
32 filed within ~~fifteen~~ THIRTY days, the amount of the assessment becomes
33 final and the lien imposed by section 23-745 attaches.

34 Sec. 5. Section 23-787, Arizona Revised Statutes, is amended to
35 read:

36 23-787. Repayment of and deductions for benefits obtained by
37 claimants not entitled to benefits; collection;
38 interest

39 A. A person who receives any amount as benefits under this chapter
40 to which the person is not entitled is liable to repay the overpaid amount
41 to the department. The department may deduct all or a portion of the
42 overpayment from future benefits payable to the person under this chapter.

43 B. If benefits to which a person is not entitled are received by
44 reason of fraud committed by the person as determined by the department,
45 the department shall assess a penalty on the person equal to fifteen ~~per~~

1 ~~cent~~ PERCENT of the amount of the erroneous payment and the person is not
2 eligible to receive any benefits under this chapter until the total amount
3 of the overpayment and all penalties and interest have been recovered,
4 WAIVED or otherwise satisfied in compliance with a civil judgment. The
5 department shall immediately deposit all assessments paid pursuant to this
6 subsection in the unemployment compensation fund established by section
7 23-701.

8 C. If benefits to which a person is not entitled are received
9 without any fault on the person's part and if repayment or deduction from
10 future benefits would be against equity and good conscience, the
11 department may waive all or a portion of the amount overpaid.

12 D. If benefits to which a person is not entitled are received
13 without any fault on the person's part, deductions made by the department
14 pursuant to subsection A of this section from benefits payable to an
15 individual for any week shall not exceed twenty-five ~~per cent~~ PERCENT of
16 the individual's weekly benefit amount unless required by federal law,
17 except that the amount recouped from benefits payable may be fifty ~~per~~
18 ~~cent~~ PERCENT of the weekly benefit amount if the individual has previously
19 received benefits but has not received benefits for at least twelve
20 consecutive months before the most recent receipt of benefits and there
21 has been no reasonable attempt to repay the indebtedness during that
22 period. The fifty ~~per cent~~ PERCENT recoupment rate may not be put in
23 effect before one year after the establishment of the overpayment.

24 E. The department shall adopt rules to implement subsection D of
25 this section.

26 F. The attorney general or the appropriate county attorney may
27 institute appropriate court proceedings to recover in the name of the
28 department any amount for which a person is liable to the department.

29 G. INTEREST ON ALL BENEFIT OVERPAYMENT DEBTS, INCLUDING THOSE
30 REDUCED TO JUDGMENT, SHALL ACCRUE AT TEN PERCENT A YEAR. THE DEPARTMENT
31 MAY WAIVE A PORTION OF ANY ACCRUED INTEREST ON A BENEFIT OVERPAYMENT DEBT
32 FOR GOOD CAUSE SHOWN. FOR BENEFIT OVERPAYMENT DEBTS CLASSIFIED AS FRAUD,
33 THE AMOUNT OF INTEREST WAIVED MAY NOT EXCEED TWENTY-FIVE PERCENT.

APPROVED BY THE GOVERNOR MARCH 14, 2017.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 14, 2017.

Passed the House March 9, 2017,

Passed the Senate February 13, 2017,

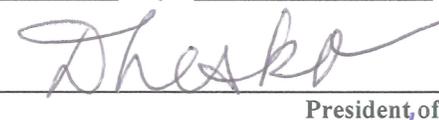
by the following vote: 59 Ayes,

by the following vote: 29 Ayes,

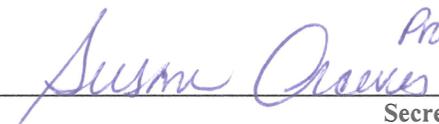
0 Nays, 1 Not Voting

1 Nays, 0 Not Voting


Speaker of the House


President of the Senate
Pro Tempore


Chief Clerk of the House


Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

14 day of March, 2017,

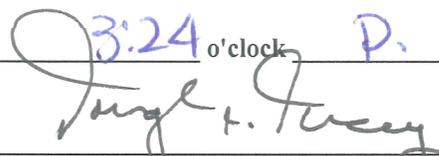
at 1:43 o'clock P. M.


Secretary to the Governor

Approved this 14th day of

March, 2017,

at 3:24 o'clock P. M.

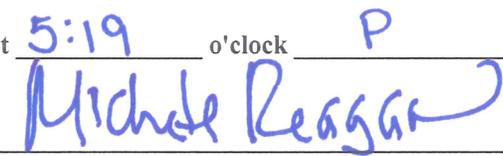

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 14 day of March, 2017,

at 5:19 o'clock P. M.


Secretary of State

S.B. 1166