

COMMITTEE ON COMMERCE
HOUSE OF REPRESENTATIVES AMENDMENTS TO S.B. 1551
(Reference to Senate engrossed bill)

Amendment instruction key:

[GREEN UNDERLINING IN BRACKETS] indicates text added to statute or previously enacted session law.

[Green underlining in brackets] indicates text added to new session law or text restoring existing law.

[~~GREEN STRIKEOUT IN BRACKETS~~] indicates new text removed from statute or previously enacted session law.

[~~Green strikeout in brackets~~] indicates text removed from existing statute, previously enacted session law or new session law.

<<Green carets>> indicate a section added to the bill.

<<~~Green strikeout in carets~~>> indicates a section removed from the bill.

1 The bill as proposed to be amended is reprinted as follows:

2 Section 1. Section 23-901, Arizona Revised Statutes, is amended to
3 read:

4 23-901. Definitions

5 In this chapter, unless the context otherwise requires:

6 1. "Award" means the finding or decision of an administrative law
7 judge or the commission as to the amount of compensation or benefit due an
8 injured employee or the dependents of a deceased employee.

9 2. "Client" means an individual, association, company, firm,
10 partnership, corporation or any other legally recognized entity that is
11 subject to this chapter and that enters into a professional employer
12 agreement with a professional employer organization.

13 3. "Co-employee" means every person employed by an injured
14 employee's employer.

15 4. "Commission" means the industrial commission of Arizona.

16 5. "Compensation" means the compensation and benefits provided by
17 this chapter.

18 6. "Employee", "workman", "worker" and "operative" means:

19 (a) Every person in the service of this state or a county, city,
20 town, municipal corporation or school district, including regular members
21 of lawfully constituted police and fire departments of cities and towns,
22 whether by election, appointment or contract of hire.

23 (b) Every person in the service of any employer subject to this
24 chapter, including aliens and minors legally or illegally allowed to work
25 for hire, but not including a person whose employment is both:

26 (i) Casual.

27 (ii) Not in the usual course of the trade, business or occupation
28 of the employer.

29 (c) Lessees of mining property and the lessees' employees and
30 contractors engaged in the performance of work that is a part of the
31 business conducted by the lessor and over which the lessor retains
32 supervision or control are within the meaning of this paragraph employees

1 of the lessor, and are deemed to be drawing wages as are usually paid
2 employees for similar work. The lessor may deduct from the proceeds of
3 ores mined by the lessees the premium required by this chapter to be paid
4 for such employees.

5 (d) Regular members of volunteer fire departments organized
6 pursuant to title 48, chapter 5, article 1, regular firefighters of any
7 volunteer fire department, including private fire protection service
8 organizations, organized pursuant to title 10, chapters 24 through 40,
9 volunteer firefighters serving as members of a fire department of any
10 incorporated city or town or an unincorporated area without pay or without
11 full pay and on a part-time basis, and voluntary policemen and volunteer
12 firefighters serving in any incorporated city, town or unincorporated area
13 without pay or without full pay and on a part-time basis, are deemed to be
14 employees, but for the purposes of this chapter, the basis for computing
15 wages for premium payments and compensation benefits for regular members
16 of volunteer fire departments organized pursuant to title 48, chapter 5,
17 article 1, or organized pursuant to title 10, chapters 24 through 40,
18 regular members of any private fire protection service organization,
19 volunteer firefighters and volunteer policemen of these departments or
20 organizations shall be the salary equal to the beginning salary of the
21 same rank or grade in the full-time service with the city, town, volunteer
22 fire department or private fire protection service organization, provided
23 if there is no full-time equivalent then the salary equivalent shall be as
24 determined by resolution of the governing body of the city, town or
25 volunteer fire department or corporation.

26 (e) Members of the department of public safety reserve, organized
27 pursuant to section 41-1715, are deemed to be employees. For the purposes
28 of this chapter, the basis for computing wages for premium payments and
29 compensation benefits for a member of the department of public safety
30 reserve who is a peace officer shall be the salary received by officers of
31 the department of public safety for the officers' first month of regular
32 duty as an officer. For members of the department of public safety
33 reserve who are not peace officers, the basis for computing premiums and
34 compensation benefits is \$400 a month.

35 (f) Any person placed in on-the-job evaluation or in on-the-job
36 training under the department of economic security's temporary assistance
37 for needy families program or vocational rehabilitation program shall be
38 deemed to be an employee of the department for the purpose of coverage
39 under the state workers' compensation laws only. The basis for computing
40 premium payments and compensation benefits shall be \$200 per month. Any
41 person receiving vocational rehabilitation services under the department
42 of economic security's vocational rehabilitation program whose major
43 evaluation or training activity is academic, whether as an enrolled
44 attending student or by correspondence, or who is confined to a hospital
45 or penal institution, shall not be deemed to be an employee of the
46 department for any purpose.

1 (g) Regular members of a volunteer sheriff's reserve, which may be
2 established by resolution of the county board of supervisors, to assist
3 the sheriff in the performance of the sheriff's official duties. A roster
4 of the current members shall monthly be certified to the clerk of the
5 board of supervisors by the sheriff and shall not exceed the maximum
6 number authorized by the board of supervisors. Certified members of an
7 authorized volunteer sheriff's reserve shall be deemed to be employees of
8 the county for the purpose of coverage under the Arizona workers'
9 compensation laws and occupational disease disability laws and shall be
10 entitled to receive the benefits of these laws for any compensable
11 injuries or disabling conditions that arise out of and occur in the course
12 of the performance of duties authorized and directed by the sheriff.
13 Compensation benefits and premium payments shall be based on the salary
14 received by a regular full-time deputy sheriff of the county involved for
15 the first month of regular patrol duty as an officer for each certified
16 member of a volunteer sheriff's reserve. This subdivision does not
17 provide compensation coverage for any member of a sheriff's posse who is
18 not a certified member of an authorized volunteer sheriff's reserve except
19 as a participant in a search and rescue mission or a search and rescue
20 training mission.

21 (h) A working member of a partnership may be deemed to be an
22 employee entitled to the benefits provided by this chapter on written
23 acceptance, by endorsement, at the discretion of the insurance carrier for
24 the partnership of an application for coverage by the working partner.
25 The basis for computing premium payments and compensation benefits for the
26 working partner shall be an assumed average monthly wage of not less than
27 \$600 or more than the maximum wage provided in section 23-1041 and is
28 subject to the discretionary approval of the insurance carrier. Any
29 compensation for permanent partial or permanent total disability payable
30 to the partner is computed on the lesser of the assumed monthly wage
31 agreed to by the insurance carrier on the acceptance of the application
32 for coverage or the actual average monthly wage received by the partner at
33 the time of injury.

34 (i) The sole proprietor of a business subject to this chapter may
35 be deemed to be an employee entitled to the benefits provided by this
36 chapter on written acceptance, by endorsement, at the discretion of the
37 insurance carrier of an application for coverage by the sole proprietor.
38 The basis for computing premium payments and compensation benefits for the
39 sole proprietor is an assumed average monthly wage of not less than \$600
40 or more than the maximum wage provided by section 23-1041 and is subject
41 to the discretionary approval of the insurance carrier. Any compensation
42 for permanent partial or permanent total disability payable to the sole
43 proprietor shall be computed on the lesser of the assumed monthly wage
44 agreed to by the insurance carrier on the acceptance of the application
45 for coverage or the actual average monthly wage received by the sole
46 proprietor at the time of injury.

1 (j) A member of the Arizona national guard, Arizona state guard or
2 unorganized militia shall be deemed a state employee and entitled to
3 coverage under the Arizona workers' compensation law at all times while
4 the member is receiving the payment of the member's military salary from
5 this state under competent military orders or on order of the governor.
6 Compensation benefits shall be based on the monthly military pay rate to
7 which the member is entitled at the time of injury, but not less than a
8 salary of \$400 per month or more than the maximum provided by the workers'
9 compensation law. Arizona compensation benefits shall not inure to a
10 member compensable under federal law.

11 (k) Certified ambulance drivers and attendants who serve without
12 pay or without full pay on a part-time basis are deemed to be employees
13 and entitled to the benefits provided by this chapter and the basis for
14 computing wages for premium payments and compensation benefits for
15 certified ambulance personnel shall be \$400 per month.

16 (l) Volunteer workers of a licensed health care institution may be
17 deemed to be employees and entitled to the benefits provided by this
18 chapter on written acceptance by the insurance carrier of an application
19 by the health care institution for coverage of such volunteers. The basis
20 for computing wages for premium payments and compensation benefits for
21 volunteers shall be \$400 per month.

22 (m) Personnel who participate in a search or rescue operation or a
23 search or rescue training operation that carries a mission identifier
24 assigned by the division of emergency management as provided in section
25 35-192.01 and who serve without compensation as volunteer state employees.
26 The basis for computation of wages for premium purposes and compensation
27 benefits is the total volunteer man-hours recorded by the division of
28 emergency management in a given quarter multiplied by the amount
29 determined by the appropriate risk management formula.

30 (n) Personnel who participate in emergency management training,
31 exercises or drills that are duly enrolled or registered with the division
32 of emergency management or any political subdivision as provided in
33 section 26-314, subsection C and who serve without compensation as
34 volunteer state employees. The basis for computation of wages for premium
35 purposes and compensation benefits is the total volunteer man-hours
36 recorded by the division of emergency management or political subdivision
37 during a given training session, exercise or drill multiplied by the
38 amount determined by the appropriate risk management formula.

39 (o) Regular members of the Arizona game and fish department
40 reserve, organized pursuant to section 17-214. The basis for computing
41 wages for premium payments and compensation benefits for a member of the
42 reserve is the salary received by game rangers and wildlife managers of
43 the Arizona game and fish department for the game rangers' and wildlife
44 managers' first month of regular duty.

45 (p) Every person employed pursuant to a professional employer
46 agreement.

1 (q) A working member of a limited liability company who owns less
2 than fifty percent of the membership interest in the limited liability
3 company.

4 (r) A working member of a limited liability company who owns fifty
5 percent or more of the membership interest in the limited liability
6 company may be deemed to be an employee entitled to the benefits provided
7 by this chapter on the written acceptance, by endorsement, of an
8 application for coverage by the working member at the discretion of the
9 insurance carrier for the limited liability company. The basis for
10 computing wages for premium payments and compensation benefits for the
11 working member is an assumed average monthly wage of \$600 or more but not
12 more than the maximum wage provided in section 23-1041 and is subject to
13 the discretionary approval of the insurance carrier. Any compensation for
14 permanent partial or permanent total disability payable to the working
15 member is computed on the lesser of the assumed monthly wage agreed to by
16 the insurance carrier on the acceptance of the application for coverage or
17 the actual average monthly wage received by the working member at the time
18 of injury.

19 (s) A working shareholder of a corporation who owns less than fifty
20 percent of the beneficial interest in the corporation.

21 (t) A working shareholder of a corporation who owns fifty percent
22 or more of the beneficial interest in the corporation may be deemed to be
23 an employee entitled to the benefits provided by this chapter on the
24 written acceptance, by endorsement, of an application for coverage by the
25 working shareholder at the discretion of the insurance carrier for the
26 corporation. The basis for computing wages for premium payments and
27 compensation benefits for the working shareholder is an assumed average
28 monthly wage of \$600 or more but not more than the maximum wage provided
29 in section 23-1041 and is subject to the discretionary approval of the
30 insurance carrier. Any compensation for permanent partial or permanent
31 total disability payable to the working shareholder is computed on the
32 lesser of the assumed monthly wage agreed to by the insurance carrier on
33 the acceptance of the application for coverage or the actual average
34 monthly wage received by the working shareholder at the time of injury.

35 7. "General order" means an order applied generally throughout this
36 state to all persons under jurisdiction of the commission.

37 8. "Heart-related or perivascular injury, illness or death" means
38 myocardial infarction, coronary thrombosis or any other similar sudden,
39 violent or acute process involving the heart or perivascular system, or
40 any death resulting therefrom, and any weakness, disease or other
41 condition of the heart or perivascular system, or any death resulting
42 therefrom.

43 9. "Insurance carrier" means every insurance carrier duly
44 authorized by the director of the department of insurance and financial
45 institutions to write workers' compensation or occupational disease
46 compensation insurance in this state.

1 10. "Interested party" means the employer, the employee, or if the
2 employee is deceased, the employee's estate, the surviving spouse or
3 dependents, the commission, the insurance carrier, ~~or their~~ THE THIRD
4 PARTY ADMINISTRATOR OR AN AUTHORIZED representative.

5 11. "Mental injury, illness or condition" means any mental,
6 emotional, psychotic or neurotic injury, illness or condition.

7 12. "Order" means and includes any rule, direction, requirement,
8 standard, determination or decision other than an award or a directive by
9 the commission or an administrative law judge relative to any entitlement
10 to compensation benefits, or to the amount of compensation benefits, and
11 any procedural ruling relative to the processing or adjudicating of a
12 compensation matter.

13 13. "Personal injury by accident arising out of and in the course
14 of employment" means any of the following:

15 (a) Personal injury by accident arising out of and in the course of
16 employment.

17 (b) An injury caused by the wilful act of a third person directed
18 against an employee because of the employee's employment, but does not
19 include a disease unless resulting from the injury.

20 (c) An occupational disease that is due to causes and conditions
21 characteristic of and peculiar to a particular trade, occupation, process
22 or employment, and not the ordinary diseases to which the general public
23 is exposed, and subject to section 23-901.01 or 23-901.09 or, for
24 heart-related, perivascular or pulmonary cases, section 23-1105.

25 14. "Professional employer agreement" means a written contract
26 between a client and a professional employer organization:

27 (a) In which the professional employer organization expressly
28 agrees to co-employ all or a majority of the employees providing services
29 for the client. In determining whether the professional employer
30 organization employs all or a majority of the employees of a client, any
31 person employed pursuant to the terms of the professional employer
32 agreement after the initial placement of client employees on the payroll
33 of the professional employer organization shall be included.

34 (b) That is intended to be ongoing rather than temporary in nature.

35 (c) In which employer responsibilities for worksite employees,
36 including hiring, firing and disciplining, are expressly allocated between
37 the professional employer organization and the client in the agreement.

38 15. "Professional employer organization" means any person engaged
39 in the business of providing professional employer services. Professional
40 employer organization does not include a temporary help firm or an
41 employment agency.

42 16. "Professional employer services" means the service of entering
43 into co-employment relationships under this chapter to which all or a
44 majority of the employees providing services to a client or to a division
45 or work unit of a client are covered employees.

46 17. "Serve" or "service" means either:

47 (a) Mailing to the last known address of the receiving party.

1 (b) Transmitting by ~~[other means, including]~~ electronic
2 transmission~~[, with the written consent of the receiving party] [IN A~~
3 ~~MANNER REASONABLY CALCULATED TO ACHIEVE EFFECTIVE NOTICE UNLESS THE~~
4 ~~RECEIVING PARTY OPTS OUT BY PROVIDING WRITTEN NOTICE TO THE OTHER PARTY]~~.

5 18. "Special order" means an order other than a general order.

6 19. "Weakness, disease or other condition of the heart or
7 perivascular system" means arteriosclerotic heart disease, cerebral
8 vascular disease, peripheral vascular disease, cardiovascular disease,
9 angina pectoris, congestive heart trouble, coronary insufficiency,
10 ischemia and all other similar weaknesses, diseases and conditions, and
11 also previous episodes or instances of myocardial infarction, coronary
12 thrombosis or any similar sudden, violent or acute process involving the
13 heart or perivascular system.

14 20. "Workers' compensation" means workmen's compensation as used in
15 article XVIII, section 8, Constitution of Arizona.

16 Sec. 2. Section 23-908, Arizona Revised Statutes, is amended to
17 read:

18 23-908. Injury reports by employer and physician; schedule of
19 fees; notification; public meeting; violation;
20 classification

21 A. Every employer that is affected by this chapter, and every
22 physician who attends an injured employee of that employer, shall file
23 with the commission and the employer's insurance carrier from time to time
24 a full and complete report of every known injury to the employee arising
25 out of or in the course of employment and resulting in loss of life or
26 injury requiring medical treatment. The report shall be furnished to the
27 commission and the insurance carrier at times and in the form and detail
28 the commission prescribes, and the report shall make special answers to
29 all questions required by the commission under its rules. For the
30 purposes of this subsection, medical treatment does not include any
31 onetime, short-term treatment by nonmedical staff that requires little
32 technology or training to administer, including treatment of minor
33 scratches, cuts, burns and splinters and other issues that ordinarily do
34 not require medical care.

35 B. The commission shall fix a schedule of fees to be charged ~~by~~
36 ~~physicians, physical therapists or occupational therapists attending FOR~~
37 ~~MEDICAL CARE, DENTAL CARE AND SUPPLIES THAT ARE RECEIVED BY~~ injured
38 employees and, subject to subsection C of this section, for prescription
39 medicines required to treat an injured employee under this chapter.
40 ~~CONTRACTS THAT ARE NECESSARY TO DEVELOP AND PUBLISH A FEE SCHEDULE RELATED~~
41 ~~TO DENTAL CARE ARE EXEMPT FROM THE REQUIREMENTS OF TITLE 41, CHAPTER 23.~~
42 Notwithstanding subsection C of this section, the schedule of fees may
43 include other reimbursement guidelines for medications dispensed in
44 settings that are not accessible to the general public. The commission
45 shall annually review the schedule of fees. For the purposes of this
46 subsection, settings that are not accessible to the general public do not

1 include mail order pharmacies delivering pharmaceutical services to
2 workers' compensation claimants, if both of the following apply:

3 1. The pharmacy does not limit or restrict access to claimants with
4 an affiliation to a medical provider or other entity.

5 2. Any medical provider or other entity referring a claimant to the
6 pharmacy does not receive or accept any rebate, refund, commission,
7 preference or other consideration as compensation for the referral.

8 C. If a schedule of fees for prescription medicines adopted
9 pursuant to subsection B of this section includes provisions regarding the
10 use of generic equivalent drugs or interchangeable biological products,
11 those provisions shall comply with section 32-1963.01, subsections A, B
12 and D through L. If the commission considers the adoption of fee schedule
13 provisions that involve specific prices, values or reimbursements for
14 prescription drugs, the commission shall base the adoption on studies or
15 practices that are validated and accepted in the industry, including the
16 applicability of formulas that use average wholesale price, plus a
17 dispensing fee, and that have been made publicly available for at least
18 one hundred eighty days before any hearing conducted by the commission.
19 Before the commission takes final action on the schedule of fees pursuant
20 to this subsection and subsection B of this section, except during a
21 public health emergency, the commission shall:

22 1. Prominently post on its publicly accessible website the proposed
23 schedule of fees at least thirty days before conducting a public hearing
24 on that proposed schedule of fees.

25 2. Hold at least one meeting that all interested parties may
26 jointly attend and interactively participate in after posting the proposed
27 schedule of fees but before conducting the hearing on the proposed
28 schedule of fees.

29 3. At least seven business days in advance, prominently post on its
30 publicly accessible website the final proposed schedule of fees to be
31 acted on for adoption.

32 D. Notwithstanding section 12-2235, information obtained by any
33 physician or surgeon examining or treating an injured person shall not be
34 considered a privileged communication if that information is requested by
35 interested parties for a proper understanding of the case and a
36 determination of the rights involved. Hospital records of an employee
37 concerning an industrial claim shall not be considered privileged if
38 requested by an interested party in order to determine the rights
39 involved. Medical information from any source pertaining to conditions
40 unrelated to the pending industrial claim shall remain privileged.

41 E. When an accident occurs to an employee, the employee shall
42 forthwith report the accident and the injury resulting from the accident
43 to the employer, and any physician employed by the injured employee shall
44 forthwith report the accident and the injury resulting from the accident
45 to the employer, the insurance carrier and the commission.

46 F. If an accident occurs to an employee, the employer may designate
47 in writing a physician chosen by the employer, who shall be allowed by the

1 employee, or any person in charge of the employee, to make one examination
2 of the injured employee in order to ascertain the character and extent of
3 the injury occasioned by the accident. The physician so chosen shall
4 forthwith report to the employer, the insurance carrier and the commission
5 the character and extent of the injury as the physician ascertains. If
6 the accident is not reported by the employee or the employee's physician
7 forthwith, as required, or if the injured employee or those in charge of
8 the employee refuse to allow the employer's physician to make the
9 examination, and the injured employee is a party to the refusal, no
10 compensation shall be paid for the injury claimed to have resulted from
11 the accident. The commission may relieve the injured person or that
12 person's dependents from the loss or forfeiture of compensation if ~~it~~ THE
13 COMMISSION believes after investigation that the circumstances attending
14 the failure on the part of the employee or physician to report the
15 accident and injury are such as to have excused them.

16 G. Within ten days after receiving notice of an accident, the
17 employer shall inform the insurance carrier and the commission on the
18 forms and in the manner as prescribed by the commission.

19 H. Immediately on notice to the employer of an accident resulting
20 in an injury to an employee, the employer shall provide the employee with
21 the name and address of the employer's insurance carrier, the policy
22 number and the expiration date.

23 I. THE COMMISSION SHALL PUBLISH ON THE COMMISSION'S PUBLICLY
24 ACCESSIBLE WEBSITE THE SCHEDULE OF FEES AS PRESCRIBED IN SUBSECTIONS B AND
25 C OF THIS SECTION. THE COMMISSION IS NOT REQUIRED TO PUBLISH THE SCHEDULE
26 OF FEES IN THE ARIZONA ADMINISTRATIVE REGISTER.

27 ~~it~~ J. Any person failing or refusing to comply with this section
28 is guilty of a petty offense.

29 ~~it~~ K. Subsection B of this section does not prohibit:

30 1. A health care provider or pharmacy from entering into a separate
31 contract or network that governs fees, in which case reimbursement shall
32 be made according to the applicable contracted charge or negotiated rate.

33 2. An employer from directing medical, surgical or hospital care
34 pursuant to section 23-1070.

35 Sec. 3. Section 23-1045, Arizona Revised Statutes, is amended to
36 read:

37 23-1045. Compensation for total disability; permanent total
38 disability defined

39 A. For temporary total disability the following compensation shall
40 be paid:

41 1. Compensation of sixty-six and two-thirds ~~per cent~~ PERCENT of the
42 average monthly wage shall be paid during the period of disability.

43 2. If there are persons dependent for support ~~upon~~ ON the employee,
44 compensation shall be paid as provided in this section, with an additional
45 allowance of ~~twenty-five dollars~~ \$100 per month for such dependents during
46 the period of disability. The additional allowance shall not be based

1 ~~upon~~ ON a per capita number of dependents but shall reflect a total
2 monthly benefit increase of exactly ~~twenty-five dollars~~ \$100.

3 B. For permanent total disability, compensation of sixty-six and
4 two-thirds ~~per cent~~ PERCENT of the average monthly wage shall be paid
5 during the life of the injured person.

6 C. In the absence of proof to the contrary, disability shall be
7 deemed total and permanent if caused by:

8 1. The total and permanent loss of sight of both eyes.

9 2. The loss by separation of both feet.

10 3. The loss by separation of both hands.

11 4. An injury to the spine resulting in permanent and complete
12 paralysis of both legs or both arms, or one leg and one arm.

13 5. An injury to the skull resulting in incurable imbecility or
14 insanity.

15 6. The loss by separation of one hand and one foot.

16 D. The enumeration in this section is not exclusive, and in all
17 other cases permanent total disability shall be determined in accordance
18 with the facts and in accordance with ~~the provisions of~~ section 23-1047.

19 Enroll and engross to conform

20 Amend title to conform

And, as so amended, it do pass

JEFF WENINGER
CHAIRMAN

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