

State of Arizona
House of Representatives
Fiftieth Legislature
Second Regular Session
2012

HOUSE BILL 2628

AN ACT

AMENDING SECTION 23-750, ARIZONA REVISED STATUTES; AMENDING TITLE 23, CHAPTER 4, ARTICLE 6, ARIZONA REVISED STATUTES, BY ADDING SECTION 23-795; 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 23-750, Arizona Revised Statutes, is amended to
3 read:

4 23-750. Special provisions for nonprofit organizations and
5 state and local governments

6 A. The provisions of this section apply to:

7 1. Any nonprofit organization described in paragraph 10 of section
8 23-617, which but for the provisions of section 23-613, subsection A,
9 paragraph 2, subdivision (c) would not be subject to this chapter, or which
10 is not mandatorily subject to this chapter because of insufficient employees
11 but which has voluntarily elected to become subject to this chapter.

12 2. This state, or a political subdivision thereof, or any
13 instrumentality, agency or board of any one or more of the foregoing or any
14 instrumentality of any of the foregoing and one or more other states or
15 political subdivisions.

16 B. Benefits paid to employees of employing units to which this section
17 applies shall be financed in accordance with the provisions of this
18 subsection.

19 1. Any employing unit to which this section applies:

20 (a) Which is or becomes subject to this chapter on January 1, 1972,
21 may elect to become liable for payments in lieu of contributions for a period
22 of not less than three consecutive taxable years beginning with January 1,
23 1972, provided it files with the department a written notice of its election
24 not later than sixty days after written notice that such election may be made
25 is first given to the employing unit by the department.

26 (b) Which becomes subject to this chapter after January 1, 1972, may
27 elect to become liable for payments in lieu of contributions for a period of
28 not less than three consecutive taxable years by filing a written notice of
29 its election with the department not later than thirty days immediately
30 following the date of the determination of such subjectivity.

31 (c) Which makes an election in accordance with subdivision (a) or (b)
32 of this paragraph shall continue to be liable for payments in lieu of
33 contributions until it files with the department a written notice terminating
34 its election not later than thirty days prior to the beginning of the taxable
35 year for which such termination shall first be effective.

36 (d) Which has been paying contributions under this chapter subsequent
37 to January 1, 1972, for a period of not less than three consecutive taxable
38 years may elect to become liable for payments in lieu of contributions for a
39 period of not less than three consecutive taxable years by filing a written
40 notice of its election with the department not later than thirty days prior
41 to the beginning of the taxable year for which such election shall first be
42 effective.

43 2. The department may for good cause extend the period within which a
44 notice of election or a notice of termination must be filed.

1 3. The department shall notify the employing unit of any determination
2 made of its status as an employer and of the effective date of any election
3 or termination of such election made in accordance with this subsection.
4 Such determination shall be subject to reconsideration, petition for hearing,
5 and judicial review in accordance with the provisions of section 23-724.

6 4. An employing unit shall pay to the department for the fund an
7 amount equal to the amount of regular benefits and of one-half of the
8 extended benefits paid which were based upon wages paid during the employing
9 unit's period of election to make payments in lieu of contributions, except
10 that a governmental entity shall pay to the department for the fund an amount
11 equal to the total amount of extended benefits paid for weeks of unemployment
12 beginning on or after January 1, 1979, which are based upon wages paid by the
13 governmental entity during its election to make payments in lieu of
14 contributions. The provisions of sections 23-727, 23-773 and 23-777, insofar
15 as they apply to noncharging an employer's account for benefit payments, do
16 not apply to benefits paid which were based upon wages paid during the
17 employing unit's period of election to make payments in lieu of
18 contributions.

19 C. As soon as practicable after the end of each calendar quarter the
20 department shall determine the amount of payments in lieu of contributions
21 due from each employing unit and shall bill each employing unit for the
22 amount due. If payment is not made on or before the date due and payable as
23 prescribed by the department, the whole or part thereafter remaining unpaid
24 shall bear interest at the rate of one per cent per month or fraction
25 thereof, from and after the due date until payment is received by the
26 department. The amount of payments due hereunder but not paid may be
27 collected by the department, together with interest and penalties, if any, in
28 the same manner and subject to the same conditions as contributions due from
29 other employers. The amount due specified in any bill from the department
30 shall be conclusive and binding on the employing unit unless not later than
31 fifteen days after the bill was mailed to its last known address, the
32 employing unit files an application for redetermination. A redetermination
33 made under this subsection shall be subject to petition for hearing and
34 judicial review in accordance with the provisions of section 23-724.

35 D. Two or more employing units that have become liable for payments in
36 lieu of contributions may file a joint application to the department for the
37 establishment of a group account for the purpose of sharing the cost of
38 benefits paid that are attributable to service in the employ of such
39 employing units. Each application shall identify and authorize a group
40 representative to act as the group's agent for the purposes of this
41 subsection. Upon approval of the application, the department shall establish
42 a group account for such employing units effective as of the beginning of the
43 calendar quarter in which the application is received and shall notify the
44 group's representative of the effective date of the account. The account
45 shall remain in effect for not less than three years and thereafter until

1 terminated at the discretion of the department or upon application by the
2 group. Upon establishment of the account, each member of the group shall be
3 liable for payments in lieu of contributions with respect to each calendar
4 quarter in the amount that bears the same ratio to the total benefits paid in
5 such quarter that are attributable to service performed in the employ of all
6 members of the group as the total wages paid for service in employment by
7 such member in such quarter bear to the total wages paid during such quarter
8 for service performed in the employ of all members of the group. The
9 department shall prescribe such regulations as it deems necessary with
10 respect to applications for establishment, maintenance, and termination of
11 group accounts that are authorized by this subsection, for addition of new
12 members to, and withdrawal of active members from, such accounts, and for the
13 determination of the amounts that are payable under this subsection by
14 members of the group and the time and manner of such payments.

15 E. Benefits are payable on the basis of employment to which this
16 section applies, in the same amount, on the same terms, and subject to the
17 same conditions as benefits payable on the basis of other employment subject
18 to this chapter, except that notwithstanding the provisions of sections
19 23-779 and 23-780:

20 1. Benefits based on service in an instructional, research, or
21 principal administrative capacity for an educational institution shall not be
22 paid to an individual for any week of unemployment which begins during the
23 period between two successive academic years, or during a similar period
24 between two regular terms, whether or not successive, or during a period of
25 paid sabbatical leave provided for in the individual's contract, if the
26 individual performs such services in the first of such academic years or
27 terms and if there is a contract or a reasonable assurance that such
28 individual will perform services in any such capacity for any educational
29 institution in the second of such academic years or terms.

30 2. Benefits based on service in any other capacity for an educational
31 institution shall not be paid to an individual for any week of unemployment
32 which begins during a period between two successive academic years or terms
33 if the individual performs such services in the first of such academic years
34 or terms and if there is a reasonable assurance that such individual will
35 perform such services in the second of such academic years or terms, except
36 that if benefits are denied to any individual under this paragraph and that
37 individual was not offered an opportunity to perform such services for the
38 educational institution for the second of such academic years or terms, the
39 individual is entitled to a retroactive payment of benefits for each week for
40 which the individual filed a timely claim for benefits and for which benefits
41 were denied solely by reason of this paragraph.

42 3. Benefits based on services described in paragraph 1 or 2 of this
43 subsection shall not be paid to an individual for any week of unemployment
44 which begins during an established and customary vacation period or holiday
45 recess if the individual performs such services in the period immediately

1 before such vacation period or holiday recess and if there is a reasonable
2 assurance that such individual will perform such services in the period
3 immediately following such vacation period or holiday recess.

4 4. With respect to any services described in paragraph 1 or 2 of this
5 subsection, benefits are not payable on the basis of services in any capacity
6 specified in paragraph 1, 2 or 3 of this subsection to any individual who
7 performed such services in an educational institution while in the employ of
8 an educational service agency. For the purposes of this paragraph,
9 "educational service agency" means a governmental agency or governmental
10 entity which is established and operated exclusively for the purpose of
11 providing such services to one or more educational institutions.

12 5. WITH RESPECT TO SERVICES DESCRIBED IN PARAGRAPH 1, 2 OR 3 OF THIS
13 SUBSECTION, BENEFITS ARE NOT PAYABLE ON THE BASIS OF SERVICES SPECIFIED IN
14 PARAGRAPH 1, 2 OR 3 OF THIS SUBSECTION TO ANY INDIVIDUAL WHO PERFORMED THESE
15 SERVICES WHILE IN THE EMPLOY OF AN ENTITY THAT PROVIDES THESE SERVICES TO OR
16 ON BEHALF OF AN EDUCATIONAL INSTITUTION.

17 F. In determining contribution rates assigned to employers under this
18 chapter, the payrolls of employing units liable for payments in lieu of
19 contributions shall not be included in computing the contribution rates to be
20 assigned to employers under this chapter. The payments in lieu of
21 contributions made by such employing units shall be included in the total
22 assets of the fund in the same manner as contributions paid by other
23 employers.

24 G. Except as inconsistent with the provisions of this section, the
25 provisions of this chapter and regulations of the department shall apply to
26 any matter arising pursuant to this section.

27 Sec. 2. Title 23, chapter 4, article 6, Arizona Revised Statutes, is
28 amended by adding section 23-795, to read:

29 23-795. Contract educational providers: definition

30 A. NOTWITHSTANDING SECTIONS 23-779 AND 23-780, BENEFITS BASED ON
31 SERVICE FOR A CONTRACT EDUCATIONAL PROVIDER SHALL NOT BE PAID TO AN
32 INDIVIDUAL FOR ANY WEEK OF UNEMPLOYMENT THAT BEGINS DURING A PERIOD BETWEEN
33 TWO SUCCESSIVE ACADEMIC YEARS OR TERMS IF BOTH OF THE FOLLOWING ARE TRUE:

34 1. THE INDIVIDUAL PERFORMS THESE SERVICES IN THE FIRST OF THE
35 SUCCESSIVE ACADEMIC YEARS OR TERMS.

36 2. THERE IS A REASONABLE ASSURANCE THAT THE INDIVIDUAL WILL PERFORM
37 THE SAME SERVICES IN THE SECOND OF THE ACADEMIC YEARS OR TERMS.

38 B. IF BENEFITS ARE DENIED TO AN INDIVIDUAL UNDER SUBSECTION A OF THIS
39 SECTION AND THE INDIVIDUAL WAS NOT OFFERED AN OPPORTUNITY TO PERFORM THESE
40 SERVICES FOR THE EMPLOYER FOR THE SECOND SUCCESSIVE ACADEMIC YEAR OR TERM,
41 THE INDIVIDUAL IS ENTITLED TO A RETROACTIVE PAYMENT OF BENEFITS FOR EACH WEEK
42 TO WHICH BOTH OF THE FOLLOWING APPLY:

43 1. THE INDIVIDUAL FILED A TIMELY CLAIM FOR BENEFITS.

44 2. THE BENEFITS WERE DENIED SOLELY BY REASON OF SUBSECTION A OF THIS
45 SECTION.

1 C. BENEFITS BASED ON SERVICE FOR A CONTRACT EDUCATIONAL PROVIDER SHALL
2 NOT BE PAID TO AN INDIVIDUAL FOR ANY WEEK OF UNEMPLOYMENT THAT BEGINS DURING
3 AN ESTABLISHED AND CUSTOMARY VACATION PERIOD OR HOLIDAY RECESS IF BOTH OF THE
4 FOLLOWING ARE TRUE:

5 1. THE INDIVIDUAL PERFORMS THESE SERVICES IN THE PERIOD IMMEDIATELY
6 BEFORE THE VACATION PERIOD OR HOLIDAY RECESS.

7 2. THERE IS A REASONABLE ASSURANCE THAT THE INDIVIDUAL WILL PERFORM
8 THE SERVICES IN THE PERIOD IMMEDIATELY FOLLOWING THE VACATION PERIOD OR
9 HOLIDAY RECESS.

10 D. FOR THE PURPOSES OF THIS SECTION, "CONTRACT EDUCATIONAL PROVIDER"
11 MEANS A PRIVATE, FOR-PROFIT ENTITY THAT IS APPROVED BY THE DEPARTMENT OF
12 EDUCATION TO PROVIDE AND DOES PROVIDE SPECIAL EDUCATION SERVICES TO PUPILS
13 FROM SCHOOLS THAT OFFER INSTRUCTION IN KINDERGARTEN PROGRAMS AND GRADES ONE
14 THROUGH TWELVE.

15 Sec. 3. Exemption from rule making

16 For the purposes of this act, the department of economic security is
17 exempt from the rule making requirements of title 41, chapter 6, Arizona
18 Revised Statutes, for one year after the effective date of this act.