

REFERENCE TITLE: **employment security; omnibus**

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

HB 2222

Introduced by
Representative Fann

AN ACT

AMENDING SECTIONS 23-672 AND 23-724, ARIZONA REVISED STATUTES; REPEALING SECTION 23-765, ARIZONA REVISED STATUTES; AMENDING SECTIONS 23-771, 41-1504, 41-1955 AND 41-1993, 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 23-672, Arizona Revised Statutes, is amended to
3 read:

4 ~~23-672.~~ Appeals board

5 A. Within the department, an appeals board is established consisting
6 of UP TO four members. The director shall appoint the members of the appeals
7 board and shall designate one member to serve as chairman.

8 B. Hearings conducted by or at the direction of the appeals board
9 shall be conducted as provided by section 23-674 and other provisions of this
10 chapter. The department shall prescribe by rule the procedures for
11 petitioning for review, removal of cases to the board and appeals under
12 section 23-673. An interested party may file either a written or electronic
13 petition for review. On the filing of a petition for review, the department
14 shall prepare a complete record unless the parties stipulate otherwise.

15 C. In any case in which a petition for review of an appeal tribunal or
16 hearing officer decision has been filed by an interested party, the appeals
17 board may remand the case to any appeal tribunal or hearing officer for
18 further proceedings or may review the matter on the basis of the record in
19 the case, take additional evidence or rehear the matter and affirm, reverse,
20 modify or set aside the decision of the appeal tribunal or hearing officer.
21 On notice to the interested parties, a petition for review may be reviewed by
22 one member of the appeals board designated by the chairman. If an interested
23 party objects to review by one board member, the matter shall be heard by
24 three members of the appeals board.

25 D. Unless a petition for hearing or review of a department
26 determination made under article 5 of this chapter is withdrawn, the appeals
27 board after affording the parties reasonable opportunity for a fair hearing
28 shall issue its decision.

29 E. Every decision of the appeals board shall be in writing. If the
30 decision is issued by ~~three~~ A MAJORITY OF THE members of the appeals board,
31 and the appeals board is not unanimous, the decision of the majority shall
32 control. The minority may file a dissent from the decision, setting forth
33 the reasons for the dissent. All interested parties shall be promptly
34 notified of the decision and the reasons for the decision. Notice to the
35 parties of the decision shall be accompanied by instructions explaining the
36 procedure for ~~requesting review as described in subsection F of this section~~
37 ~~and clearly indicating the final date for filing a request for~~ review
38 PURSUANT TO SECTION 41-1993.

39 ~~F. A party dissatisfied with the decision under subsection E of this~~
40 ~~section may file a request for review within thirty days from the date of the~~
41 ~~decision, which shall be a written or electronic request and memorandum~~
42 ~~stating the reasons why the appeals board's decision is in error and~~
43 ~~containing appropriate citations of the record, rules and other authority.~~
44 ~~On motion, and for good cause, the appeals board may extend the time for~~
45 ~~filing a request for review. The timely filing of such a request for review~~
46 ~~is a prerequisite to any further appeal. The appeals board shall notify all~~

~~parties of the filing of a request for review and shall allow fifteen days from the date of the notice for any party to respond. Thereafter, the appeals board shall issue a decision on review affirming, modifying or reversing its decision, or ordering the taking of additional testimony. All parties shall be given written notice by mail of the decision on review.~~

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

23-724. Liability determinations; review; finality

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

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

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

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

2. There has been a change in the law or interpretation of the law ~~which~~ THAT warrants a revised determination, reconsidered determination or decision.

D. The effective date of a revision under subsection C of this 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 later than the last day of the
3 month immediately subsequent to the calendar quarter in which the change
4 occurred.

5 2. The first day of the calendar quarter in which the employer files
6 the request and submits the pertinent information unless the employer
7 demonstrates to the satisfaction of the department that good cause exists for
8 the failure to notify the department within the period prescribed by
9 paragraph 1 of this subsection of the occurrence of the change warranting the
10 revision. In the event ~~such~~ THAT good cause is demonstrated, the effective
11 date shall be 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 to
14 the appeals board. ~~THE EMPLOYER'S APPEAL SHALL BE FILED EITHER~~
15 ~~ELECTRONICALLY OR IN WRITING.~~ Notwithstanding any other provision of law and
16 pursuant to ~~such an~~ THE appeal, the appeals board may initiate hearings to
17 obtain information and issue a decision as to whether the relief requested in
18 subsection C of this section should be granted. Thereafter, the appeals
19 board shall issue a decision in the matter. The decision ~~OF THE APPEALS~~
20 ~~BOARD~~ may not be appealed with respect to the employing unit unless ~~petition~~
21 ~~for review and~~ A request for JUDICIAL review ~~are~~ IS filed within the time and
22 in the manner provided in section ~~23-672~~ 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 determination
26 or decision that an employing unit is liable that has become final shall be
27 conclusive and binding on the employing unit and shall not be reconsidered in
28 proceedings brought before the department or a hearing officer.

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

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

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

38 3. The reasoning applied in making the determination.

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

41 H. If any determination covered by subsection G of this section is
42 defective because it fails to meet the requirements of subsection G of this
43 section, the defect may be cured by issuance of a corrected, amended or new
44 determination. If a defect is alleged and specified in writing within the
45 period for appeal, all time periods applicable to the determination are
46 suspended pending the curative action.

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

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

Sec. 3. Delayed repeal

Section 23-765, Arizona Revised Statutes, is repealed from and after December 31, 2016.

Sec. 4. Section 23-771, Arizona Revised Statutes, is amended to read: 23-771. Eligibility for benefits

A. An unemployed individual ~~shall be~~ IS eligible to receive benefits with respect to any week only if the department finds that the individual:

1. Has registered for work at and thereafter has continued to report at an employment office in accordance with ~~such~~ THE regulations ~~as~~ PRESCRIBED BY the department ~~prescribes~~.

2. Has made a claim for benefits in accordance with section 23-772.

3. Is able to work.

4. Except for an individual who is applying for shared work benefits pursuant to article 5.1 of this chapter, is available for work and both of the following apply:

(a) The individual has engaged in a systematic and sustained effort to obtain work during at least four days of the week.

(b) The individual has made at least ~~three~~ FOUR work search contacts ~~during~~ ON FOUR DIFFERENT DAYS OF the week.

5. Has been unemployed for a waiting period of one week. A week ~~shall~~ IS not ~~be~~ counted as a week of unemployment for the purpose of this paragraph:

(a) Unless it occurs within the benefit year that includes the week with respect to which the individual claims payment of benefits.

(b) Unless the individual was eligible for benefits with respect thereto as provided in this section and sections 23-775, 23-776 and 23-777.

(c) If benefits have been paid in respect thereto.

6. Has met one of the following requirements:

(a) Has been paid wages for insured work during the individual's base period equal to at least one and one-half times the wages paid to the individual in the calendar quarter of the individual's base period in which ~~such~~ THE wages were highest, and the individual has been paid wages for insured work in one calendar quarter of the individual's base period equal to an amount that is equal to at least three hundred ninety times the minimum wage prescribed by section 23-363 that is in effect when the individual files a claim for benefits.

(b) Has for a benefit year beginning on or after September 2, 1984, been paid wages for insured work during at least two quarters of the individual's base period and the amount of ~~such~~ THE wages paid in one quarter

1 would be sufficient to qualify the individual for the maximum weekly benefit
2 amount payable under this chapter and the total of the individual's
3 base-period wages is equal to or greater than the taxable limit as specified
4 in section 23-622, subsection B, paragraph 1.

5 7. Following the beginning date of a benefit year established under
6 this chapter or the unemployment compensation law of any other state and
7 ~~prior to~~ BEFORE the effective date of a subsequent benefit year under this
8 chapter, has performed services whether or not in employment as defined in
9 section 23-615 for which wages were payable in an amount equal to or in
10 excess of eight times the weekly benefit amount for which the individual is
11 otherwise qualified under section 23-779. In making a determination under
12 this paragraph the department shall use information available in its records
13 or require the individual to furnish necessary information within thirty days
14 ~~from~~ AFTER the date notice is given that ~~such~~ THE information is required.

15 B. If an unemployed individual cannot establish a benefit year as
16 defined in section 23-609 due to receipt during the base period of
17 compensation for a temporary total disability pursuant to chapter 6 of this
18 title, or any similar federal law, the individual's base period shall be the
19 first four of the last five completed calendar quarters immediately preceding
20 the first day of the calendar week in which the disability began. Wages
21 previously used to establish a benefit year may not be reused. This
22 subsection does not apply unless all of the following occur:

23 1. The individual has filed a claim for benefits not later than the
24 fourth calendar week of unemployment after the end of the period of
25 disability.

26 2. The claim is filed within two years after the period of disability
27 begins.

28 3. The individual meets the requirements of subsection A of this
29 section.

30 4. The individual has attempted to return to the employment where the
31 temporary total disability occurred.

32 C. If an unemployed individual is a member of the national guard or
33 other reserve component of the United States armed forces, the individual
34 ~~shall~~ IS not ~~be~~ considered to be either employed or unavailable for work by
35 reason of the individual's participation in drill, training or other national
36 guard or reserve activity that occurs on not more than one weekend per month
37 or in lieu of a weekend drill or the equivalent.

38 D. The department shall not disqualify an individual from receiving
39 benefits under this chapter on the basis of the individual's separation from
40 employment if the individual is a victim of domestic violence and leaves
41 employment due to a documented case involving domestic violence pursuant to
42 section 13-3601 or 13-3601.02. Benefits paid to an individual pursuant to
43 this subsection shall not be charged against an employer's account pursuant
44 to section 23-727, subsection G.

45 E. For the purposes of subsection A, paragraph 6 of this section,
46 wages shall be counted as "wages for insured work" for benefit purposes with

1 respect to any benefit year only if that benefit year begins subsequent to
2 the date on which the employing unit by which those wages were paid has
3 become an employer subject to this chapter.

4 Sec. 5. Section 41-1504, Arizona Revised Statutes, is amended to read:
5 41-1504. Powers and duties; e-verify requirement

6 A. The board of directors, on behalf of the authority, may:

7 1. Adopt and use a corporate seal.

8 2. Sue and be sued.

9 3. Enter into contracts as necessary to carry out the purposes and
10 requirements of this chapter, including intergovernmental agreements pursuant
11 to title 11, chapter 7, article 3 and interagency service agreements as
12 provided by section 35-148.

13 4. Lease real property and improvements to real property for the
14 purposes of the authority. Leases by the authority are exempt from chapter
15 4, article 7 of this title, relating to management of state properties.

16 5. Employ or retain legal counsel and other consultants as necessary
17 to carry out the purposes of the authority.

18 6. Develop and use written policies, procedures and guidelines for the
19 terms and conditions of employing officers and employees of the authority and
20 may include background checks of appropriate personnel.

21 B. The board of directors, on behalf of the authority, shall:

22 1. Develop comprehensive long-range strategic economic plans for this
23 state and submit the plans to the governor.

24 2. Annually update a strategic economic plan for submission to the
25 governor.

26 3. Accept gifts, grants and loans and enter into contracts and other
27 transactions with any federal or state agency, municipality, private
28 organization or other source.

29 C. The authority shall:

30 1. Assess and collect fees for processing applications and
31 administering incentives. The board shall adopt the manner of computing the
32 amount of each fee to be assessed. Within thirty days after proposing fees
33 for adoption, the chief executive officer shall submit a schedule of the fees
34 for review by the joint legislative budget committee. It is the intent of
35 the legislature that a fee shall not exceed one ~~per-cent~~ PERCENT of the
36 amount of the incentive.

37 2. Determine and collect registry fees for the administration of the
38 allocation of federal tax exempt industrial development bonds and student
39 loan bonds authorized by the authority. Such monies collected by the
40 authority shall be deposited, pursuant to sections 35-146 and 35-147, in an
41 authority bond fund. Monies in the fund shall be used, subject to annual
42 appropriation by the legislature, by the authority to administer the
43 allocations provided in this paragraph and are exempt from the provisions of
44 section 35-190 relating to the lapsing of appropriations.

45 3. Determine and collect security deposits for the allocation, for the
46 extension of allocations and for the difference between allocations and

1 principal amounts of federal tax exempt industrial development bonds and
2 student loan bonds authorized by the authority. Security deposits forfeited
3 to the authority shall be deposited in the state general fund.

4 4. At the direction of the board, establish and supervise the
5 operations of full-time or part-time offices in other states and foreign
6 countries for the purpose of expanding direct investment and export trade
7 opportunities for businesses and industries in this state if, based on
8 objective research, the authority determines that the effort would be
9 beneficial to the economy of this state.

10 5. Establish a program by which entrepreneurs become aware of permits,
11 licenses or other authorizations needed to establish, expand or operate in
12 this state.

13 ~~6. Be the state registration agency for apprenticeship functions~~
14 ~~prescribed by the federal government.~~

15 D. The authority, through the chief executive officer, may:

16 1. Contract and incur obligations reasonably necessary or desirable
17 within the general scope of the authority's activities and operations to
18 enable the authority to adequately perform its duties.

19 2. Use monies, facilities or services to provide matching
20 contributions under federal or other programs that further the objectives and
21 programs of the authority.

22 3. Accept gifts, grants, matching monies or direct payments from
23 public or private agencies or private persons and enterprises for the conduct
24 of programs that are consistent with the general purposes and objectives of
25 this chapter.

26 4. Assess business fees for promotional services provided to
27 businesses that export products and services from this state. The fees shall
28 not exceed the actual costs of the services provided.

29 5. Establish and maintain one or more accounts in banks or other
30 depositories, for public or private monies of the authority, from which
31 operational activities, including payroll, vendor and grant payments, may be
32 conducted. Individual funds that are established by law under the
33 jurisdiction of the authority may be maintained in separate accounts in banks
34 or other depositories, but shall not be commingled with any other monies or
35 funds of the authority.

36 E. The chief executive officer shall:

37 1. Hire employees and prescribe the terms and conditions of their
38 employment as necessary to carry out the purposes of the authority. The
39 board of directors shall adopt written policies, procedures and guidelines,
40 similar to those adopted by the department of administration, regarding
41 officer and employee compensation, observed holidays, leave and reimbursement
42 of travel expenses and health and accident insurance. The officers and
43 employees of the authority are exempt from any laws regulating state
44 employment, including:

45 (a) Chapter 4, articles 5 and 6 of this title, relating to state
46 service.

1 (b) Title 38, chapter 4, article 1 and chapter 5, article 2, relating
2 to state personnel compensation, leave and retirement.

3 (c) Title 38, chapter 4, article 2, relating to reimbursement of state
4 employee expenses.

5 (d) Title 38, chapter 4, article 4, relating to health and accident
6 insurance.

7 2. On a quarterly basis, provide public record data in a manner
8 prescribed by the department of administration related to the authority's
9 revenues and expenditures for inclusion in the comprehensive database of
10 receipts and expenditures of state monies pursuant to section 41-725.

11 F. In addition to any other requirement, in order to qualify for any
12 grant, loan, reimbursement, tax incentive or other economic development
13 incentive pursuant to this chapter, an applicant that is an employer must
14 register with and participate in the e-verify program in compliance with
15 section 23-214. The authority shall require verification of compliance with
16 this subsection as part of any application process.

17 G. Notwithstanding any other law, the authority is subject to chapter
18 3.1, article 1 of this title, relating to risk management.

19 H. The authority is exempt from chapter 32, articles 1 and 2 of this
20 title, relating to statewide information technology. The authority shall
21 adopt policies, procedures and guidelines regarding information technology.

22 I. The authority is exempt from state general accounting and finance
23 practices and rules adopted pursuant to chapter 4, article 3 of this title,
24 but the board shall adopt written accounting practices, systems and
25 procedures for the economic and efficient operation of the authority.

26 J. The authority is exempt from section 41-712, relating to the
27 installation and maintenance of ~~telecommunications~~ TELECOMMUNICATION systems.

28 K. The authority may lease or purchase motor vehicles for use by
29 employees to conduct business activities. The authority is exempt from
30 section 41-803, relating to the state motor vehicle fleet, and title 38,
31 chapter 3, article 10, relating to vehicle usage and markings.

32 L. Any tangible or intangible record submitted to or compiled by the
33 board or the authority in connection with its work, including the award of
34 monies, is subject to title 39, chapter 1, unless an applicant shows, or the
35 board or authority determines, that specific information meets either of the
36 following:

37 1. If made public, the information would divulge the applicant's or
38 potential applicant's trade secrets, as defined in section 44-401.

39 2. If made public, the information could potentially harm the
40 applicant's, ~~THE~~ potential applicant's or this state's competitive position
41 relating to potential business development opportunities and strategies.

42 M. The authority is exempt from chapter 25, article 1 of this title,
43 relating to government competition with private enterprise.

Sec. 6. Section 41-1955, Arizona Revised Statutes, is amended to read:
41-1955. Duty of department concerning employment
stabilization, ex-offender rehabilitation, income
maintenance and manpower development; research
studies

The department, with the advice and aid of its advisory councils, shall:

1. Take appropriate steps to reduce and prevent unemployment and dependency, and to assist in alleviating the economic and social impact of unemployment and dependency on the person and his family.

2. Encourage and assist in the adoption of practical methods of manpower services, occupational training, vocational counseling and guidance, vocational rehabilitation and retraining, supportive services and other such services the director deems appropriate.

3. Research, recommend, advise and assist in the establishment of community or area facilities, public and private, or both, to provide an integration of direct services and programs for the development of the state's manpower and the reduction of dependency.

4. Promote the effective utilization of unemployed and under-utilized workers.

5. Aid in the rehabilitation of employable ex-offenders, in cooperation with the department of corrections. An ex-offender, by accepting the assistance provided for by this article, shall not be disqualified from receiving further assistance from any other state agency to which he is legally entitled.

6. BE THE STATE REGISTRATION AGENCY FOR APPRENTICESHIP FUNCTIONS PRESCRIBED BY THE FEDERAL GOVERNMENT.

~~6-~~ 7. Carry out and publish the results of research studies for the purpose of this chapter.

Sec. 7. Section 41-1993, Arizona Revised Statutes, is amended to read:
41-1993. Judicial review

A. Any party aggrieved by a decision of the director is entitled to judicial review of the decision pursuant to title 12, chapter 7, article 6.

B. Any party aggrieved by a decision ~~on review~~ of the appeals board may file an application for appeal to the court of appeals with the clerk of the appeals board within thirty days ~~of~~ AFTER the date of mailing or electronic transmission of the decision ~~on review~~, except as provided in subsection C of this section. On the filing of an application for appeal, the clerk of the appeals board shall transmit to the court of appeals the application for appeal, the ~~original decision of~~ DECISIONS ISSUED BY the appeals board, ~~AND all requests~~ PETITIONS for review and responses, ~~and the decision on review~~ of the appeals board. The clerk of the appeals board shall also transmit any portions of the record before the department requested by the court of appeals. ~~The clerk of the appeals board shall not process an application for appeal unless the appellant has previously filed a timely request for review under section 23-672 or 41-1992 and a decision on~~

1 ~~review has been issued.~~ The court of appeals shall thereafter grant or deny
2 the application for appeal. If the application is denied, the decision ~~on~~
3 ~~review~~ of the appeals board shall be deemed final, and ~~no~~ further appeal may
4 NOT be taken. If the application is granted, the rules for appeals in civil
5 actions shall apply, commencing with the preparation and transmittal of the
6 complete record before the department and a record index. ~~No~~ A bond for
7 costs on appeal or docket fee ~~shall be~~ IS NOT required. The department and
8 all parties before the appeals board shall be given notice of the appeal and
9 an opportunity to appear. All ~~such~~ appeals ~~shall be~~ ARE limited to the
10 record before the department unless the court orders otherwise. ~~No~~ AN issue
11 may NOT be raised on appeal ~~which~~ THAT has not been raised in the ~~request~~
12 PETITION for review before the appeals board. The department shall provide
13 the record for use by the court and by any parties who request copies. The
14 cost of providing the record is a taxable cost if the department
15 prevails. The court of appeals may designate one department or division one
16 to hear all appeals under this section.

17 C. Any party aggrieved by a decision ~~on review~~ of the appeals board
18 concerning tax liability, collection or enforcement may appeal to the tax
19 court, as defined in section 12-161, within thirty days after the date of
20 mailing or electronic transmission of the decision ~~on review~~. The appellant
21 need not pay any of the tax, penalty or interest upheld by the appeals board
22 in its decision ~~on review~~ before initiating, or in order to maintain an
23 appeal to the tax court pursuant to this section.

24 D. Any appeal that is taken to tax court pursuant to this section is
25 subject to the following provisions:

26 1. No injunction, writ of mandamus or other legal or equitable process
27 may issue in an action in any court in this state against an officer of this
28 state to prevent or enjoin the collection of any tax, penalty or interest.

29 2. The action shall not begin more than thirty days after the date of
30 mailing or electronic transmission of the appeals board's decision ~~on review~~.
31 Failure to bring the action within thirty days after the date of mailing or
32 electronic transmission of the appeals board's decision ~~on review~~ constitutes
33 a waiver of the protest and a waiver of all claims against this state arising
34 from or based on the illegality of the tax, penalties and interest at issue.

35 3. The scope of review of an appeal to tax court pursuant to this
36 section shall be governed by section 12-910, applying section 23-613.01 as
37 that section reads on the date the appeal is filed to the tax court or as
38 thereafter amended. Either party to the action may appeal to the court of
39 appeals or supreme court as provided by law.

40 ~~4. The action cannot be initiated or maintained unless the appellant~~
41 ~~has previously filed a timely request for review under section 23-672 or~~
42 ~~41-1992 and a decision on review has been issued.~~