

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

**CHAPTER 186**  
**HOUSE BILL 2240**

AN ACT

AMENDING SECTION 23-941, ARIZONA REVISED STATUTES; AMENDING TITLE 23, CHAPTER 6, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 23-954; AMENDING SECTIONS 23-1044, 23-1062 AND 23-1070.01, ARIZONA REVISED STATUTES; RELATING TO WORKERS' COMPENSATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:  
2 Section 1. Section 23-941, Arizona Revised Statutes, is amended to  
3 read:  
4 23-941. Hearing rights and procedure  
5 A. Subject to ~~the provisions of~~ section 23-947, any interested party  
6 may file a request for a hearing concerning a claim.  
7 B. A request for a hearing shall be made in writing, ~~BE~~ signed by or  
8 on behalf of the interested party and ~~including his~~ INCLUDE THE INTERESTED  
9 PARTY'S address, ~~stating~~ STATE that a hearing is desired, ~~and~~ ~~BE~~ filed with  
10 the commission.  
11 C. The commission shall refer the request for the hearing to the  
12 administrative law judge division for determination as expeditiously as  
13 possible. The presiding administrative law judge may dismiss a request for  
14 hearing ~~when~~ IF it appears to ~~his~~ THE PRESIDING ADMINISTRATIVE LAW JUDGE'S  
15 satisfaction that the disputed issue or issues have been resolved by the  
16 parties. Any interested party who objects to such dismissal may request a  
17 review pursuant to section 23-943.  
18 D. At least twenty days' prior notice of the time and place of the  
19 hearing shall be given to all parties in interest by mail at their last known  
20 address. In the case of a hearing concerning suspension of benefits,  
21 pursuant to section 23-1026, 23-1027 or 23-1071, only ten days' prior notice  
22 ~~need be given~~ IS REQUIRED. Hearings shall be held in the county where the  
23 workman resided at the time of the injury or ~~such other~~ ANOTHER place  
24 selected by the administrative law judge.  
25 E. A record of all proceedings at the hearing shall be made but need  
26 not be transcribed unless a party applies to the court of appeals for a writ  
27 of certiorari pursuant to section 23-951. The record of the proceedings if  
28 not transcribed, shall be kept for at least two years but may be destroyed  
29 after ~~such~~ THAT time if a transcription is not requested.  
30 F. Except as otherwise provided in this section and rules ~~or~~ OF  
31 procedure established by the commission, the administrative law judge is not  
32 bound by common law or statutory rules of evidence or by technical or formal  
33 rules of procedure and may conduct the hearing in any manner that will  
34 achieve substantial justice.  
35 G. Any party shall be entitled to issuance and service of subpoenas  
36 under ~~the provisions of~~ section 23-921. Any party or ~~his~~ THE PARTY'S  
37 representative may serve such subpoenas.  
38 H. Any interested party or ~~his~~ THE INTERESTED PARTY'S authorized agent  
39 shall be entitled to inspect any claims file of the commission, provided that  
40 such authorization is filed in writing with the commission.  
41 I. ANY INTERESTED PARTY IS ENTITLED TO ONE CHANGE OF ADMINISTRATIVE  
42 LAW JUDGE AS A MATTER OF RIGHT. TO EXERCISE THE RIGHT TO A CHANGE OF  
43 ADMINISTRATIVE LAW JUDGE, THE INTERESTED PARTY SHALL FILE A NOTICE OF CHANGE  
44 OF ADMINISTRATIVE LAW JUDGE. THE NOTICE OF CHANGE OF ADMINISTRATIVE LAW  
45 JUDGE SHALL:  
46 1. BE SIGNED BY THE INTERESTED PARTY OR THE INTERESTED PARTY'S

1 AUTHORIZED AGENT.

2 2. STATE THE NAME OF THE ADMINISTRATIVE LAW JUDGE TO BE CHANGED.

3 3. CERTIFY THAT THE INTERESTED PARTY OR THE INTERESTED PARTY'S  
4 AUTHORIZED AGENT HAS TIMELY FILED THE NOTICE OF CHANGE OF ADMINISTRATIVE LAW  
5 JUDGE. A NOTICE OF CHANGE OF ADMINISTRATIVE LAW JUDGE AS A MATTER OF RIGHT  
6 IS TIMELY IF FILED NOT MORE THAN THIRTY DAYS AFTER THE DATE OF THE NOTICE OF  
7 HEARING OR NOT MORE THAN THIRTY DAYS AFTER A NEW ADMINISTRATIVE LAW JUDGE IS  
8 ASSIGNED TO THE CLAIM IF ANOTHER INTERESTED PARTY OR THE INTERESTED PARTY'S  
9 AUTHORIZED AGENT HAS FILED A NOTICE OF CHANGE OF ADMINISTRATIVE LAW JUDGE AS  
10 A MATTER OF RIGHT.

11 4. CERTIFY THAT THE INTERESTED PARTY OR THE INTERESTED PARTY'S  
12 AUTHORIZED AGENT HAS NOT PREVIOUSLY BEEN GRANTED A CHANGE OF ADMINISTRATIVE  
13 LAW JUDGE AS A MATTER OF RIGHT FOR THE CLAIM.

14 ~~I. J. Within thirty days after the date of notice of hearing~~ Any  
15 interested party to a hearing before the commission OR THE INTERESTED PARTY'S  
16 AUTHORIZED AGENT may file an affidavit for change of administrative law judge  
17 FOR CAUSE against ~~any hearing officer of the commission hearing such matters~~  
18 ~~or commencing to hear such matter, setting~~ A PRESIDING ADMINISTRATIVE LAW  
19 JUDGE THAT SETS forth any of the grounds as provided in subsection ~~J~~ K of  
20 this section. ~~, and~~ The CHIEF administrative law judge shall immediately  
21 transfer the matter to another ~~officer of the commission who shall preside~~  
22 ~~therein. Not more than one change of administrative law judge shall be~~  
23 ~~granted to any one party.~~ ADMINISTRATIVE LAW JUDGE. AN AFFIDAVIT FOR CHANGE  
24 OF ADMINISTRATIVE LAW JUDGE FOR CAUSE SHALL BE FILED WITHIN THE TIME FRAMES  
25 PROVIDED IN SUBSECTION I OF THIS SECTION.

26 ~~J. K.~~ K. Grounds ~~which~~ THAT may be alleged as provided in subsection ~~I~~  
27 J of this section for change of administrative law judge FOR CAUSE are:

28 1. That the administrative law judge has been engaged as counsel in  
29 the hearing ~~prior to~~ BEFORE appointment as administrative law judge.

30 2. That the administrative law judge is otherwise interested in the  
31 hearing.

32 3. That the administrative law judge is of kin or otherwise related to  
33 a party to the hearing.

34 4. That the administrative law judge is a material witness in the  
35 hearing.

36 5. That the party filing the affidavit has cause to believe and does  
37 believe that on account of the bias, prejudice, ~~or~~ or interest of the  
38 administrative law judge ~~he~~ THE ADMINISTRATIVE LAW JUDGE cannot obtain a fair  
39 and impartial hearing.

40 L. FOR THE PURPOSES OF SUBSECTIONS I AND J OF THIS SECTION, THE  
41 EMPLOYER AND THE EMPLOYER'S INSURANCE CARRIER ARE CONSIDERED A SINGLE PARTY  
42 UNLESS THE EMPLOYER'S AND THE EMPLOYER'S INSURANCE COMPANY'S INTERESTS ARE IN  
43 CONFLICT.

44 ~~K. M.~~ M. After final disposition of the proceedings in which they are  
45 used, exhibits marked for identification or introduced as evidence at  
46 hearings or proceedings ~~which~~ THAT cannot be readily copied, photocopied,

1 mechanically reproduced or otherwise preserved as a document for inclusion in  
2 the record of the proceedings may be disposed of in the following manner:

3 1. By written notice, the attorneys of record, or if none, the  
4 parties, shall be notified that the counsel or the party introducing ~~such~~ THE  
5 exhibit may claim it at the industrial commission within sixty days.

6 2. After sixty days following notification, any ~~such~~ exhibit remaining  
7 in the custody of the industrial commission shall be disposed of as state  
8 surplus property pursuant to the direction of the department of  
9 administration, ~~surplus property division~~. A written description of ~~any such~~  
10 THE exhibit shall be included in the record to preserve ~~its~~ THE EXHIBIT'S  
11 identity.

12 Sec. 2. Title 23, chapter 6, article 3, Arizona Revised Statutes, is  
13 amended by adding section 23-954, to read:

14 23-954. Payment of interest on awards

15 INTEREST ON THE PAYMENT OF BENEFITS SHALL BE PAID AT A RATE OF INTEREST  
16 AT THE LESSER OF TEN PERCENT PER ANNUM OR A RATE PER ANNUM THAT IS EQUAL TO  
17 ONE PERCENT PLUS THE PRIME RATE AS PUBLISHED BY THE BOARD OF GOVERNORS OF THE  
18 FEDERAL RESERVE SYSTEM IN STATISTICAL RELEASE H.15 OR ANY PUBLICATION THAT  
19 MAY SUPERSEDE IT ON THE DATE BENEFITS ARE PAID. INTEREST SHALL BE PAID ONLY  
20 IN THE FOLLOWING INSTANCES:

21 1. ON AN AWARD ENTERED BY THE COMMISSION OR BY NOTICE OF CLAIM STATUS  
22 AWARDING PERMANENT PARTIAL DISABILITY BENEFITS PURSUANT TO SECTION 23-1044,  
23 SUBSECTION B OR C OR PERMANENT TOTAL DISABILITY BENEFITS PURSUANT TO SECTION  
24 23-1045, SUBSECTION B OR C, IF BENEFITS ARE NOT PAID WITHIN TEN DAYS AFTER  
25 THE DATE THE AWARD OR NOTICE BECOMES FINAL.

26 2. ON A CLAIM FOR DEPENDENT BENEFITS, IF THE CLAIM IS DENIED AND  
27 SUBSEQUENTLY ACCEPTED OR FOUND COMPENSABLE BY AWARD OF THE COMMISSION, FROM  
28 THE DATE THE CLAIM FOR BENEFITS WAS FILED.

29 Sec. 3. Section 23-1044, Arizona Revised Statutes, is amended to read:

30 23-1044. Compensation for partial disability; computation

31 A. For temporary partial disability there shall be paid during the  
32 period thereof sixty-six and two-thirds ~~per cent~~ PERCENT of the difference  
33 between the wages earned before the injury and the wages ~~which~~ THAT the  
34 injured person is able to earn thereafter. Unemployment benefits received  
35 during the period of temporary partial disability ~~and fifty per cent of~~  
36 ~~retirement and pension benefits received from the insured or self-insured~~  
37 ~~employer during the period of temporary partial disability~~ shall be  
38 considered wages able to be earned.

39 B. Disability shall be deemed permanent partial disability if caused  
40 by any of the following specified injuries, and compensation of fifty-five  
41 ~~per cent~~ PERCENT of the average monthly wage of the injured employee, in  
42 addition to the compensation for temporary total disability, shall be paid  
43 for the period given in the following schedule:

44 1. For the loss of a thumb, fifteen months.

45 2. For the loss of a first finger, commonly called the index finger,  
46 nine months.

- 1           3. For the loss of a second finger, seven months.
- 2           4. For the loss of a third finger, five months.
- 3           5. For the loss of the fourth finger, commonly called the little
- 4           finger, four months.
- 5           6. The loss of a distal or second phalange of the thumb or the distal
- 6           or third phalange of the first, second, third or fourth finger, shall be
- 7           considered equal to the loss of one-half of the thumb or finger, and
- 8           compensation shall be one-half of the amount specified for the loss of the
- 9           entire thumb or finger.
- 10          7. The loss of more than one phalange of the thumb or finger shall be
- 11          considered as the loss of the entire finger or thumb, but in no event shall
- 12          the amount received for more than one finger exceed the amount provided for
- 13          the loss of a hand.
- 14          8. For the loss of a great toe, seven months.
- 15          9. For the loss of a toe other than the great toe, two and one-half
- 16          months.
- 17          10. The loss of the first phalange of any toe shall be considered
- 18          equal to the loss of one-half of the toe and compensation shall be one-half
- 19          of the amount for one toe.
- 20          11. The loss of more than one phalange shall be considered as the loss
- 21          of the entire toe.
- 22          12. For the loss of a major hand, fifty months, or of a minor hand,
- 23          forty months.
- 24          13. For the loss of a major arm, sixty months, or of a minor arm,
- 25          fifty months.
- 26          14. For the loss of a foot, forty months.
- 27          15. For the loss of a leg, fifty months.
- 28          16. For the loss of an eye by enucleation, thirty months.
- 29          17. For the permanent and complete loss of sight in one eye without
- 30          enucleation, twenty-five months.
- 31          18. For permanent and complete loss of hearing in one ear, twenty
- 32          months.
- 33          19. For permanent and complete loss of hearing in both ears, sixty
- 34          months.
- 35          20. The permanent and complete loss of the use of a finger, toe, arm,
- 36          hand, foot or leg may be deemed the same as the loss of any such member by
- 37          separation.
- 38          21. For the partial loss of use of a finger, toe, arm, hand, foot or
- 39          leg, or partial loss of sight or hearing, fifty ~~per cent~~ PERCENT of the
- 40          average monthly wage during that proportion of the number of months in the
- 41          foregoing schedule provided for the complete loss of use of such member, or
- 42          complete loss of sight or hearing, which the partial loss of use thereof
- 43          bears to the total loss of use of such member or total loss of sight or
- 44          hearing. ~~It~~ FOR THE PURPOSES OF this paragraph, "loss of use" means a loss
- 45          of physical function of the affected member, sight or hearing. The effect on
- 46          an employee's ability to return to the employee's occupation at the time of

1 the injury shall not be considered in establishing the percentage of loss  
2 under this section, except that if the employee is unable to return to the  
3 work the employee was performing at the time the employee was injured due to  
4 the total or partial loss of use, compensation pursuant to this section shall  
5 be calculated based on seventy-five ~~per-cent~~ PERCENT of the average monthly  
6 wage.

7 22. For permanent disfigurement about the head or face, ~~which shall~~  
8 ~~include~~ INCLUDING injury to or loss of teeth, the commission ~~may, in~~  
9 ~~accordance with the provisions of~~ PURSUANT TO section 23-1047, MAY allow such  
10 sum for compensation thereof as it deems just, in accordance with the proof  
11 submitted, for a period of not ~~to exceed~~ MORE THAN eighteen months.

12 C. In cases not enumerated in subsection B of this section, if the  
13 injury causes permanent partial disability for work, the employee shall  
14 receive during such disability compensation equal to fifty-five ~~per-cent~~  
15 PERCENT of the difference between the employee's average monthly wages before  
16 the accident and the amount ~~which~~ THAT represents the employee's reduced  
17 monthly earning capacity resulting from the disability, but the payment shall  
18 not continue after the disability ends, or the death of the injured employee,  
19 and in case the partial disability begins after a period of total disability,  
20 the period of total disability shall be deducted from the total period of  
21 compensation.

22 D. In determining the amount ~~which~~ THAT represents the reduced monthly  
23 earning capacity for the purposes of subsections A and C of this section,  
24 consideration shall be given, among other things, to any previous disability,  
25 the occupational history of the injured employee, the nature and extent of  
26 the physical disability, the type of work the injured employee is able to  
27 perform ~~subsequent to~~ AFTER the injury, any wages received for work performed  
28 ~~subsequent to~~ AFTER the injury and the age of the employee at the time of  
29 injury. If the employee is unable to return to work or continue working in  
30 any employment after the injury due to the employee's termination from  
31 employment for reasons that are unrelated to the industrial injury, the  
32 commission may consider the wages that the employee could have earned from  
33 that employment as representative of the employee's earning capacity. A  
34 determination of earning capacity that is based on wages that could have been  
35 earned from previously terminated employment is subject to change under  
36 subsection F of this section and an employee retains the right to later  
37 establish that the employee's reduced earning capacity is related in whole or  
38 in part to the industrial injury.

39 E. In case there is a previous disability, as the loss of one eye, one  
40 hand, one foot or otherwise, the percentage of disability for a subsequent  
41 injury shall be determined by computing the percentage of the entire  
42 disability and deducting therefrom the percentage of the previous disability  
43 as it existed at the time of the subsequent injury.

44 F. For the purposes of subsection C of this section, the commission,  
45 in accordance with the provisions of section 23-1047 when the physical  
46 condition of the injured employee becomes stationary, shall determine the

1 amount ~~which~~ THAT represents the reduced monthly earning capacity and ~~upon~~ ON  
2 such determination make an award of compensation ~~which shall be~~ THAT IS  
3 subject to change in any of the following events:

4 1. ~~Upon~~ ON a showing of a change in the physical condition of the  
5 employee ~~subsequent to~~ AFTER such findings and award arising out of the  
6 injury resulting in the reduction or increase of the employee's earning  
7 capacity.

8 2. ~~Upon~~ ON a showing of a reduction in the earning capacity of the  
9 employee arising out of such injury where there is no change in the  
10 employee's physical condition, ~~subsequent to~~ AFTER the findings and award.

11 3. ~~Upon~~ ON a showing that the employee's earning capacity has  
12 increased ~~subsequent to~~ AFTER such findings and award.

13 G. The commission may adopt a schedule for rating loss of earning  
14 capacity and reasonable and proper rules to carry out ~~the provisions of~~ this  
15 section. In all cases involving this section, except for cases under  
16 subsection B of this section, or in cases involving a request pursuant to  
17 section 23-1061, subsection J for disability compensation, if any issue is  
18 raised regarding whether the injured employee has suffered a loss of earning  
19 capacity because of an inability to obtain or retain suitable work, the  
20 following apply:

21 1. The employer or carrier may present evidence showing that the  
22 inability to obtain suitable work is due, in whole or in part, to economic or  
23 business conditions, or other factors unrelated to the industrial  
24 injury. The injured employee may present evidence showing that the inability  
25 to obtain suitable work is due, in whole or in part, to the industrial injury  
26 or limitations resulting from the injury. The administrative law judge shall  
27 consider all such evidence in determining whether and to what extent the  
28 injured employee has sustained any loss of earning capacity.

29 2. In cases involving loss of employment, the employer or carrier may  
30 present evidence showing that the injured employee was terminated from  
31 employment or has not obtained suitable work, or both, due, in whole or in  
32 part, to economic or business conditions, or other factors unrelated to the  
33 injury. The injured employee may present evidence showing that such  
34 termination or inability to obtain suitable work is due, in whole or in part,  
35 to the industrial injury or limitations resulting from the injury. The  
36 administrative law judge shall consider all such evidence in determining  
37 whether and to what extent the injured employee has sustained any loss or  
38 additional loss of earning capacity.

39 H. Any single injury or disability that is listed in subsection B of  
40 this section and that is not converted into an injury or disability  
41 compensated under subsection C of this section by operation of this section  
42 shall be treated as scheduled under subsection B of this section regardless  
43 of its actual effect on the injured employee's earning capacity.

44 Sec. 4. Section 23-1062, Arizona Revised Statutes, is amended to read:



