

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

CHAPTER 147
SENATE BILL 1478

AN ACT

AMENDING SECTIONS 23-401, 23-407, 23-408, 23-418.01, 23-420, 23-421 AND 23-422, ARIZONA REVISED STATUTES; AMENDING SECTION 23-422, ARIZONA REVISED STATUTES, AS AMENDED BY THIS ACT; AMENDING SECTION 23-423, ARIZONA REVISED STATUTES; AMENDING TITLE 23, CHAPTER 2, ARTICLE 10, ARIZONA REVISED STATUTES, BY ADDING SECTION 23-432; AMENDING SECTIONS 23-471, 23-473, 23-475, 23-478, 23-485, 23-486, 23-488, 23-491, 23-491.04 AND 23-491.06, ARIZONA REVISED STATUTES; RELATING TO OCCUPATIONAL SAFETY AND HEALTH.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 23-401, Arizona Revised Statutes, is amended to
3 read:

4 **23-401. Definitions**

5 In this article, unless the context otherwise requires:

6 1. "Board" means a review board established pursuant to section
7 23-422.

8 2. "Commission" means the industrial commission of Arizona.

9 3. "De minimis violation" means a condition or practice ~~which~~ THAT,
10 although undesirable, has no direct or immediate relationship to safety or
11 health.

12 4. "Director" means the director of the division.

13 5. "Division" means the division of occupational safety and health
14 within the commission.

15 6. "Employee" means any person performing services for an employer,
16 including any person defined as an employee pursuant to section 23-901,
17 except employees engaged in household domestic labor.

18 7. "Employer" means any individual or type of organization,
19 including ~~the~~ THIS state and all ~~its~~ political subdivisions **OF THIS STATE**,
20 ~~which~~ THAT has in its employ one or more individuals performing services
21 for it in employment and includes self-employed persons, but does not
22 include employers of household domestic labor.

23 8. "Interested party" means the commission and ~~its~~ THE COMMISSION'S
24 agents, the employer and the affected employees of such employer.

25 9. "MODEL SYSTEM" MEANS AN EXEMPLARY AND VOLUNTARY IMPLEMENTED
26 WORKER SAFETY AND HEALTH MANAGEMENT SYSTEM THAT:

27 (a) EXCEEDS BASIC COMPLIANCE WITH OCCUPATIONAL SAFETY AND HEALTH
28 LAWS AND REGULATIONS.

29 (b) MEETS THE REQUIREMENTS ADOPTED BY THE DIVISION PURSUANT TO
30 SECTION 23-432.

31 ~~9.~~ 10. "Non-serious violation" means a condition or practice in a
32 place of employment ~~which~~ THAT does not constitute a serious violation but
33 ~~which~~ THAT violates a standard or regulation and has a direct or immediate
34 relationship to safety or health, unless the employer did not, and could
35 not with the exercise of reasonable diligence, know of the presence of
36 such condition or practice.

37 11. "PROGRAM" MEANS THE VOLUNTARY PROTECTION PROGRAM OR ANY OTHER
38 PROGRAM UNDER WHICH THE DIRECTOR RECOGNIZES AND PARTNERS WITH WORKPLACES
39 THAT HAVE IMPLEMENTED A MODEL SYSTEM.

40 ~~10.~~ 12. "Recognized hazard" means an unsafe or unhealthy
41 condition or practice recognized as such with respect to the standard of
42 knowledge in the industry.

43 ~~11.~~ 13. "Regulation" means any written regulation of occupational
44 safety and health governing places of employment formulated pursuant to

1 section 23-410, exclusive of standards, and shall have the same meaning as
2 and include the term "rule".

3 ~~12.~~ 14. "Serious violation" means a condition or practice in a
4 place of employment ~~which~~ THAT violates a standard, regulation or section
5 23-403, subsection A and produces a substantial probability that death or
6 serious physical harm could result, unless the employer did not, and could
7 not with the exercise of reasonable diligence, know of the presence of
8 such condition or practice.

9 ~~13.~~ 15. "Standard" means any occupational safety and health
10 standard ~~which~~ THAT has been adopted and promulgated by a nationally
11 recognized standards-producing organization or the federal government and
12 shall have the same meaning as, and include the term "code".

13 ~~14.~~ 16. "Trade secret" means a plan or process, tool, mechanism, or
14 compound not patented, known only to its owner and those of ~~this~~ THE
15 OWNER'S employees to whom it is necessary to confide it, or other
16 information that the employer treats as confidential and has a reasonable
17 basis for doing so.

18 ~~15.~~ 17. "Workplace" means a location or site wherein work, either
19 temporary or permanent, is being conducted in connection with an industry,
20 trade or business.

21 Sec. 2. Section 23-407, Arizona Revised Statutes, is amended to
22 read:

23 **23-407. Duties and powers of the division**

24 The division on behalf of the commission shall:

25 1. Recommend all standards, rules or changes thereto, pursuant to
26 section 23-410, to the commission for the commission's approval or
27 disapproval.

28 2. Have the authority to enforce all such standards or rules, after
29 adoption by the commission, pursuant to the procedures and requirements of
30 this article.

31 3. Implement an occupational safety and health program that
32 includes the following duties and responsibilities:

33 (a) Development of a statewide occupational safety and health
34 education and training program to acquaint employers, supervisors,
35 employees and employee representatives with the most modern and effective
36 techniques of accident prevention and occupational health control.

37 (b) Development of training programs for employees of the division,
38 and where necessary develop certification programs for recognition of
39 competent, trained personnel.

40 (c) Planning, organizing, conducting or attending occupational
41 safety and health seminars, conferences and meetings designed for
42 management, supervisory personnel, employees and employer representatives
43 and establishing liaison with other safety and health groups as may be
44 necessary.

45 (d) Definition and establishment of necessary research projects.

1 (e) Arrangement and procurement of necessary contractual services
2 and training aids.

3 (f) Development of specific occupational safety and health programs
4 for employer and employee representative groups.

5 4. Develop and maintain an effective program of collection,
6 compilation and analysis of occupational safety and health statistics. The
7 division shall compile statistics on work injuries and illnesses that
8 shall include all disabling, serious or significant injuries and illnesses
9 whether or not involving loss of time from work, other than minor injuries
10 requiring only first aid treatment and that do not involve medical
11 treatment, loss of consciousness, restriction of work or motion or
12 transfer to another job.

13 5. Coordinate the responsibilities and functions of other state
14 agencies and political subdivisions of the state with regard to
15 occupational safety and health in order to develop a comprehensive
16 statewide program.

17 6. Contract with the office of administrative hearings to conduct
18 hearings and adjudicate contested cases on an employer filing a notice of
19 contest of a citation, **PROPOSED PENALTY OR ABATEMENT PERIOD** pursuant to
20 this article. The decisions of the office of administrative hearings
21 shall be subject to appeal to the review board established pursuant to
22 this article.

23 Sec. 3. Section 23-408, Arizona Revised Statutes, is amended to
24 read:

25 23-408. Inspection of places and practices of employment;
26 closing conference; prohibitions; employee
27 initiation of investigation; violation;
28 classification; injunction

29 A. EXCEPT AS PRESCRIBED IN SECTION 23-432, SUBSECTION E, the
30 director of the division of occupational safety and health, or the
31 director's authorized representative, on presentation of credentials,
32 shall be permitted to inspect places of employment, question employees and
33 investigate conditions, practices or matters in connection with employment
34 subject to this article at reasonable times, as the director or the
35 director's authorized representative may deem appropriate to determine
36 whether any person has violated any provision of this article or any rule
37 or regulation issued pursuant to this article or that may aid in the
38 enforcement of ~~the provisions of~~ this article. An employer or other
39 person shall not refuse to admit the director or the director's authorized
40 representatives to any place or refuse to permit the inspection if the
41 proper credentials are presented and the inspection is made at a
42 reasonable time.

43 B. IN MAKING INSPECTIONS AND INVESTIGATIONS, THE DIRECTOR OR THE
44 DIRECTOR'S AUTHORIZED REPRESENTATIVE MAY REQUIRE THE ATTENDANCE AND
45 TESTIMONY OF WITNESSES AND THE PRODUCTION OF EVIDENCE UNDER OATH.

1 WITNESSES SHALL BE PAID THE SAME FEES AND MILEAGE PAID TO WITNESSES IN THE
2 COURTS OF THIS STATE. IF ANY PERSON FAILS OR REFUSES TO OBEY SUCH AN
3 ORDER, THE DIRECTOR OR THE DIRECTOR'S AUTHORIZED REPRESENTATIVE MAY APPLY
4 TO ANY SUPERIOR COURT IN ANY COUNTY WHERE THE PERSON IS FOUND, RESIDES OR
5 TRANSACTS BUSINESS FOR AN ORDER REQUIRING THE PERSON TO PRODUCE EVIDENCE
6 AND TO GIVE TESTIMONY AS ORDERED. FAILURE TO OBEY SUCH AN ORDER IS
7 CONTEMPT OF COURT.

8 ~~B.~~ C. The director or the director's authorized representative
9 shall inspect at least every six months any operation that mixes rock,
10 sand, gravel or similar materials with water and cement or with asphalt
11 and that is not included in the definition of mine in section 27-301. The
12 director or the director's authorized representative shall monitor and
13 work with the mine inspector only to the extent necessary to ensure this
14 state's compliance with federal occupational safety and health act
15 standards, (P.L. 91-596).

16 ~~C.~~ D. Notice of an intended inspection shall not be given to an
17 employer before the time of actual entry on the workplace, except by
18 specific authorization by the director.

19 ~~D.~~ E. A representative of the employer and a representative
20 authorized by the employer's employees shall be given an opportunity to
21 accompany the director or the director's authorized representative during
22 the physical inspection of any workplace for the purpose of aiding the
23 inspection. Where there is no authorized employee representative, the
24 director or the director's authorized representative shall consult a
25 reasonable number of employees concerning matters of safety and health in
26 the workplace.

27 ~~E.~~ F. Except as provided in section 23-426, information and facts
28 developed by the commission, the director or any employee of the
29 commission or division in the course of any inspection or investigation
30 are public records subject to inspection pursuant to title 39, chapter 1,
31 article 2, if, pursuant to section 23-415, subsection D, the inspection or
32 investigation has been closed or a citation has been issued. Such
33 information and facts shall not be admissible in any court or before any
34 administrative body except pursuant to this article. Notwithstanding this
35 subsection, the director or any commission employee is not required to
36 appear at any deposition, trial or hearing concerning a division
37 inspection or investigation unless the appearance is related to a hearing
38 held pursuant to this article. Hearings held pursuant to this article are
39 open to the public.

40 ~~F.~~ G. During the inspection or investigation and in deciding
41 whether to recommend and issue a citation, the director or the director's
42 authorized representative and the commission may consider whether an
43 employee has committed misconduct by violating the employer's policies, if
44 any, regarding substance abuse while working, as evidenced by the results

1 of testing for substance abuse or other evidence of impairment while
2 working.

3 ~~G.~~ H. An employee of the division or the commission may not:

4 1. Before, during or after an inspection or investigation,
5 communicate to an employer that the employer should not be represented by
6 an attorney or that the employer may be treated more favorably by the
7 division or the commission if the employer is not represented by an
8 attorney.

9 2. Conduct an audio recording of an oral statement provided during
10 an interview without the knowledge and consent of the person being
11 interviewed. The employee of the division or the commission shall inform
12 the person being interviewed of the person's right to receive a copy of
13 the recorded oral statement within a reasonable time.

14 3. Obtain a written statement during an interview without informing
15 the person of the person's right to receive a copy of the written
16 statement within a reasonable time.

17 ~~H.~~ I. An employee or a representative of employees who believes
18 that a violation of a safety or health standard or regulation exists that
19 threatens physical harm or that an imminent danger exists may request an
20 investigation by giving notice to the director or the director's
21 authorized representative of the violation or danger. Any notice shall be
22 in writing, set forth with reasonable particularity the grounds for the
23 notice and be signed by the employees or representative of the employees.
24 On the request of the employee giving the notice, the employee's name and
25 the names of other employees referred to in the notice shall not appear on
26 any copy of the notice or any record published, released or made
27 available. If on receipt of the notice the director determines that there
28 are reasonable grounds to believe that the violation or danger exists, the
29 director shall make an investigation in accordance with ~~the provisions of~~
30 this article as soon as practicable to determine if the violation or
31 danger exists. If the director determines there are no reasonable grounds
32 to believe that a violation or danger exists, the director shall notify
33 the employees or representative of the employees in writing of the
34 determination.

35 ~~I.~~ J. Any person who violates any provision of this section is
36 guilty of a class 2 misdemeanor.

37 ~~J.~~ K. The commission, or the commission's authorized
38 representative, in addition to initiating an action under subsection ~~H.~~ I
39 of this section, may file in the superior court in the county where the
40 inspection was refused a verified complaint against an employer who
41 violates subsection A of this section and request an injunction against
42 continued refusal to permit an inspection.

1 Sec. 4. Section 23-418.01, Arizona Revised Statutes, is amended to
2 read:

3 **23-418.01. Additional penalty for wilful or repeated
4 violation causing employee permanent disability
5 or death covered by workers' compensation;
6 payment to employee; enforcement**

7 A. An additional penalty of twenty-five thousand dollars shall be
8 assessed by the commission against an employer who is assessed a penalty
9 under section 23-418, subsection A for each employee injury resulting in
10 permanent disability or death if the commission finds all of the
11 following:

12 1. The employee injury resulting in permanent disability or death
13 was caused by the violation for which the employer is assessed a penalty
14 under section 23-418, subsection A.

15 2. Compensation benefits are paid under chapter 6 of this title
16 either:

17 (a) To the injured employee.

18 (b) In the event of death, To the employee's dependents. The
19 requirement of this subdivision is satisfied if an employee did not have
20 any dependents for which compensation benefits would have otherwise been
21 paid under chapter 6 of this title.

22 3. The violation for which the employer is assessed a penalty under
23 section 23-418, subsection A did not result from the injured or deceased
24 employee's disobedience to specific instructions given to the employee
25 regarding the job condition causing the employee's injury or death or
26 relating to the safety standards applicable to that job condition.

27 B. Each additional penalty assessed under subsection A of this
28 section shall be paid to the injured employee, or in the event of death,
29 the employee's dependents or the employee's estate if the employee did not
30 have any dependents, in addition to the benefits paid under chapter 6 of
31 this title.

32 C. If an employer requests a hearing on an additional penalty
33 assessed under this section, the commission ~~may either hear the issues
34 raised pursuant to the hearing procedures under this article or may~~ SHALL
35 refer the ~~matter to an administrative law judge assigned to hear matters
36 relating to the workers' compensation claim under chapter 6 of this
37 title. If the hearing procedures are under this article, the procedures
38 for further review or appeal shall be in accordance with this article. If
39 the hearing procedures are under chapter 6 of this title, the procedures
40 for further review or appeal shall be in accordance with chapter 6,~~
**41 REQUEST FOR HEARING TO THE OFFICE OF
42 ADMINISTRATIVE HEARINGS FOR DETERMINATION.** An additional penalty under
43 this section that becomes final shall operate as a judgment against the
44 employer and may be enforced by either the commission or the injured
45 employee, or in the case of death, the employee's dependents or the

1 employee's estate if the employee did not have any dependents, and all
2 lawful remedies for the collection of judgments, including provisional
3 remedies, shall be available. This section does not create any right of
4 action or recovery against the employer's workers' compensation insurance
5 carrier, and the additional penalty provided by this section is not a
6 compensation benefit under chapter 6 of this title and is not subject to
7 the payment of attorney fees.

8 Sec. 5. Section 23-420, Arizona Revised Statutes, is amended to
9 read:

10 **23-420. Hearing rights and procedures**

11 A. Subject to ~~the provisions of~~ section 23-417, an interested party
12 may request a hearing.

13 B. A request for hearing shall be made in writing, signed by or on
14 behalf of the interested party and including ~~his~~ THE REQUESTING PARTY'S
15 address AND E-MAIL ADDRESS, stating that a hearing is desired, and mailed
16 OR E-MAILED to the commission. The request shall also state with
17 particularity the violation, abatement period or penalty ~~which~~ THAT is
18 being protested. Any violation, abatement period or penalty not protested
19 within the time limit specified on the citation or penalty notice will be
20 deemed admitted.

21 C. The commission shall refer the request for hearing to the
22 ~~administrative law judge division~~ OFFICE OF ADMINISTRATIVE HEARINGS for
23 determination as expeditiously as possible. The administrative law judge
24 assigned to hear a case arising out of this article shall either be
~~a member of the administrative law judge division of the commission~~
~~established pursuant to section 23-108.02 or an attorney appointed by the~~
~~commission to hear specifically matters arising under this article~~
25 ~~EMPLOYED OR CONTRACTED BY THE OFFICE OF ADMINISTRATIVE HEARINGS.~~

26 D. At least five days ~~prior to~~ BEFORE any hearing, notice of the
27 time and place of ~~such~~ THE hearing shall be given to all parties in
28 interest by mail at their last known address. The hearing shall be held
29 in the county where the violation has occurred or such other place as
30 selected by the administrative law judge.

31 E. A record of all proceedings at the hearing shall be kept but
32 need not be transcribed unless a party requests a review of the decision
33 of the administrative law judge.

34 F. Except as otherwise provided in this section and by rules of
35 procedure promulgated by the commission pursuant to section 23-405,
36 paragraph ~~5~~ 4, the administrative law judge is not bound by common law or
37 statutory rules of evidence or by technical or formal rules of procedure
38 and shall conduct the hearing in any manner that will achieve substantial
39 justice.

40 G. An interested party ~~shall be~~ IS entitled to the issuance of
41 subpoenas for the attendance of witnesses, parties and the production of
42 reports, papers, contracts, books, accounts, documents and testimony ~~which~~

1 THAT are relevant and material to the issue. The commission OR THE
2 ADMINISTRATIVE LAW JUDGE shall issue such subpoenas. The commission may
3 initiate contempt proceedings against any person who refuses to comply
4 with a duly issued subpoena, UPON ON application to the superior
5 court. Any person held in contempt may be punished by a fine of not ~~to~~
6 ~~exceed~~ MORE THAN one thousand dollars.

7 Sec. 6. Section 23-421, Arizona Revised Statutes, is amended to
8 read:

9 23-421. Decisions of the administrative law judge

10 A. UPON ON the conclusion of any hearing, or ~~prior thereto~~ BEFORE
11 THE CONCLUSION OF ANY HEARING with concurrence of the parties, the
12 administrative law judge shall promptly and not later than thirty days
13 after the matter is submitted for decision decide the matter in accordance
14 with ~~his~~ THE ADMINISTRATIVE LAW JUDGE'S determination. ~~He~~ THE
15 ADMINISTRATIVE LAW JUDGE may affirm, reverse or modify the disputed action
16 and any penalty.

17 B. The decision shall be filed with the commission. A copy of the
18 decision shall be sent immediately by mail OR E-MAIL to all parties in
19 interest.

20 C. The decision is final unless within fifteen days after the date
21 on which a copy of the decision is mailed OR E-MAILED to the parties one
22 of the parties requests a review under section 23-423. The request for
23 review shall be filed within fifteen days from the date of mailing OR
24 E-MAILING of the decision. For the purposes of this section, "filed"
25 means deposited in the United States mail, postage prepaid or actually
26 received at an office of the industrial commission. The decision shall
27 contain a statement explaining these rights and the rights of the parties
28 under section 23-423.

29 Sec. 7. Section 23-422, Arizona Revised Statutes, is amended to
30 read:

31 23-422. Review board

32 A. A review board is established within the commission to hear and
33 rule on appeals of administrative law judge decisions generated in this
34 article. The board shall consist of five members WHO ARE appointed by the
35 governor. ~~The occupational safety and health advisory committee shall~~
36 ~~submit to the governor a list of names of persons to be considered for~~
37 ~~appointment to the board AND~~ who by reason of training, education or
38 experience are qualified to carry out the powers and duties of the board.
39 ~~One member shall be a representative of management, one member shall be a~~
40 ~~representative of labor and three members shall be representatives of the~~
41 ~~general public.~~ The board shall elect a chairman from the board's
42 membership.

43 B. Members of the board shall be appointed to five-year terms,
44 except that of the members first appointed, one each shall serve for a
45 term of one, two, three, four and five years. A vacancy occurring on the

1 board other than by expiration of a term shall be filled in the manner
2 original appointments were made, for the unexpired portion of the term.
3 Members of the board may be removed by the governor for inefficiency,
4 neglect of duty, malfeasance or nonfeasance in office. The board shall
5 meet as often as necessary to hold review hearings as provided in section
6 23-423, at times and places as the chairman may determine. ~~One member~~
7 ~~from management, one member from labor and one member from the general~~
8 ~~public~~ A QUORUM OF THE BOARD shall be present in order to conduct review
9 hearings or other business. All decisions of the board shall be
10 determined by a majority decision.

11 C. The commission shall employ a staff necessary for the efficient
12 administration of the board's activities. All personnel of the board
13 shall be under the supervision of the director of the commission and shall
14 be paid from the general fund, subject to legislative appropriation.

15 D. Board members shall receive compensation pursuant to section
16 38-611, which shall be paid from the general fund, subject to legislative
17 appropriation.

18 E. The monies appropriated to carry out the purposes of subsections
19 C and D of this section shall be appropriated to the commission, shall not
20 exceed twenty thousand dollars per year and are exempt from the provisions
21 of section 35-190 relating to lapsing of appropriations. The monies shall
22 be kept separate and apart from other monies of the commission and shall
23 be available only to the board.

24 F. A member of the board shall not participate on a matter with
25 which the member is personally associated. If a member is disqualified
26 pursuant to this subsection or is unable to participate for any other
27 reason on a particular matter, the governor shall appoint a person as a
28 temporary member to participate in the hearing. ~~The occupational safety~~
~~and health advisory committee shall submit to the governor a list of names~~
~~of persons to be considered for a temporary appointment.~~ The person shall
31 meet the qualifications of subsection A of this section, ~~and shall be~~
~~representative of the same area as that of the member for whom the person~~
~~is serving as alternate.~~

34 Sec. 8. Section 23-422, Arizona Revised Statutes, as amended by
35 section 7 of this act, is amended to read:

36 **23-422. Review board**

37 A. A review board is established within the commission to hear and
38 rule on appeals of administrative law judge decisions generated in this
39 article. The board shall consist of five members who are appointed by the
40 governor. ~~and THE OCCUPATIONAL SAFETY AND HEALTH ADVISORY COMMITTEE SHALL~~
~~SUBMIT TO THE GOVERNOR A LIST OF NAMES OF PERSONS TO BE CONSIDERED FOR~~
~~APPOINTMENT TO THE BOARD~~ who by reason of training, education or
43 experience are qualified to carry out the powers and duties of the board.
44 ~~ONE MEMBER SHALL BE A REPRESENTATIVE OF MANAGEMENT, ONE MEMBER SHALL BE A~~
45 ~~REPRESENTATIVE OF LABOR AND THREE MEMBERS SHALL BE REPRESENTATIVES OF THE~~

1 GENERAL PUBLIC. The board shall elect a chairman from the board's
2 membership.

3 B. Members of the board shall be appointed to five-year terms,
4 except that of the members first appointed, one each shall serve for a
5 term of one, two, three, four and five years. A vacancy occurring on the
6 board other than by expiration of a term shall be filled in the manner
7 original appointments were made, for the unexpired portion of the term.
8 Members of the board may be removed by the governor for inefficiency,
9 neglect of duty, malfeasance or nonfeasance in office. The board shall
10 meet as often as necessary to hold review hearings as provided in section
11 23-423, at times and places as the chairman may determine. ~~A quorum of~~
12 ~~the board~~ ONE MEMBER FROM MANAGEMENT, ONE MEMBER FROM LABOR AND ONE MEMBER
13 FROM THE GENERAL PUBLIC shall be present in order to conduct review
14 hearings or other business. All decisions of the board shall be
15 determined by a majority decision.

16 C. The commission shall employ a staff necessary for the efficient
17 administration of the board's activities. All personnel of the board
18 shall be under the supervision of the director of the commission and shall
19 be paid from the general fund, subject to legislative appropriation.

20 D. Board members shall receive compensation pursuant to section
21 38-611, which shall be paid from the general fund, subject to legislative
22 appropriation.

23 E. The monies appropriated to carry out the purposes of subsections
24 C and D of this section shall be appropriated to the commission, shall not
25 exceed twenty thousand dollars per year and are exempt from the provisions
26 of section 35-190 relating to lapsing of appropriations. The monies shall
27 be kept separate and apart from other monies of the commission and shall
28 be available only to the board.

29 F. A member of the board shall not participate on a matter with
30 which the member is personally associated. If a member is disqualified
31 pursuant to this subsection or is unable to participate for any other
32 reason on a particular matter, the governor shall appoint a person as a
33 temporary member to participate in the hearing. **THE OCCUPATIONAL SAFETY**
34 AND HEALTH ADVISORY COMMITTEE SHALL SUBMIT TO THE GOVERNOR A LIST OF NAMES
35 OF PERSONS TO BE CONSIDERED FOR A TEMPORARY APPOINTMENT. The person shall
36 meet the qualifications of subsection A of this section, **AND SHALL BE**
37 **REPRESENTATIVE OF THE SAME AREA AS THAT OF THE MEMBER FOR WHOM THE PERSON**
38 **IS SERVING AS ALTERNATE.**

39 Sec. 9. Section 23-423, Arizona Revised Statutes, is amended to
40 read:

41 **23-423. Review board rights and procedures**

42 A. A request for review to the review board shall be filed with the
43 commission within fifteen days ~~from~~ AFTER the date the decision was mailed
44 **OR E-MAILED** to the parties and copies of the request shall be mailed to
45 all other parties to the proceeding before the administrative law

1 judge. For the purposes of this section, "filed" means deposited in the
2 United States mail, postage prepaid or actually received by the
3 commission.

4 B. The request for review shall state the grounds for review and
5 whether oral argument is requested.

6 C. When review has been requested, the record of such oral
7 proceedings at the hearing before the administrative law judge for
8 purposes of the review shall be transcribed at the expense of the party
9 requesting review. The record shall be certified to be true and correct
10 by the ~~administrative law judge~~ OFFICE OF ADMINISTRATIVE HEARINGS.

11 D. THE BOARD SHALL GIVE THE PARTIES notice of review ~~shall be given~~
12 ~~the parties~~ by mail ~~by the board~~ OR E-MAIL.

13 E. If oral argument is requested, a hearing date shall be
14 established and notice of ~~such~~ THE HEARING DATE will be sent with the
15 notice of review to the parties.

16 F. The review of the board shall be based ~~upon~~ ON the record
17 submitted to it under ~~the provisions of~~ subsection C OF THIS SECTION and
18 such oral argument as may be requested and received. If the board
19 determines that a case has been improperly, incompletely or otherwise
20 insufficiently developed or heard by the administrative law judge, it may
21 remand the case to the administrative law judge for further evidence
22 taking, correction or other necessary action.

23 G. The board may affirm, reverse, modify or supplement the decision
24 of the administrative law judge and make such disposition of the case as
25 it determines to be appropriate. ~~It~~ THE BOARD shall make a decision
26 within thirty days after review has been submitted.

27 H. The decision of the board shall be filed with the commission and
28 a copy ~~thereof~~ OF THE DECISION sent by mail OR E-MAIL to the parties.

29 ~~1.~~ All decisions of the review board shall be in writing.

30 ~~2.~~ Decisions of the review board shall be made by a majority vote
31 of the review board.

32 ~~3.~~ A decision of the review board is binding ~~upon~~ ON the director
33 and the division with respect to the parties involved in the particular
34 appeal. The director shall have the right to seek judicial review of a
35 review board decision irrespective of whether or not ~~he~~ THE DIRECTOR
36 appeared or participated in the appeal to the review board.

37 I. The decision of the board is final unless within ten days after
38 the date of service of copies of such decision on the parties, one of the
39 parties applies to the court of appeals for a writ of certiorari to review
40 the lawfulness of the decision. A copy of such application shall be
41 forthwith transmitted to the clerk of the court, to the review board, to
42 the commission and to the other parties and within ten days therefrom, the
43 commission shall certify the record, proceedings and evidence before the
44 administrative law judge and the review board to the court of appeals.
45 Upon ON such filing, the court shall have jurisdiction of the proceedings

1 and of the question determined therein, and shall have power to make and
2 enter ~~upon~~ ON the pleadings, testimony and proceedings set forth in such
3 record a decree affirming, modifying or setting aside in whole or in part,
4 the order of the review board and enforcing the same to the extent that
5 such order is affirmed or modified. The commencement of proceedings under
6 this subsection ~~shall~~ DOES not, unless ordered by the court, operate as a
7 stay of the order of the review board. No objection that has not been
8 urged before the review board shall be considered by the court, unless the
9 failure or neglect to urge such objection shall be excused because of
10 extraordinary circumstances. The findings of the review board with
11 respect to questions of fact, if supported by substantial evidence on the
12 record considered as a whole, shall be conclusive. If any party ~~shall~~
13 ~~apply~~ APPLIES to the court for leave to adduce additional evidence and
14 ~~shall show~~ SHOWS to the satisfaction of the court that such additional
15 evidence is material and that there were reasonable grounds for the
16 failure to adduce such evidence in the hearing before the administrative
17 law judge, the court may order such additional evidence to be taken before
18 the administrative law judge and to be made a part of the
19 record. Petitions filed under this subsection shall be heard
20 expeditiously and the decision of the review board shall contain a
21 statement of this right of appeal.

22 Sec. 10. Title 23, chapter 2, article 10, Arizona Revised Statutes,
23 is amended by adding section 23-432, to read:

24 23-432. Voluntary protection and other model system
25 implementation programs; program termination

26 A. THE DIVISION SHALL ADOPT DEFINITIONS, REGULATIONS AND STANDARDS
27 NECESSARY FOR THE OPERATION OF THE PROGRAM IN A MANNER THAT WILL PROMOTE
28 SAFE AND HEALTHY WORKPLACES THROUGHOUT THIS STATE. STANDARDS FOR THE
29 PROGRAM SHALL INCLUDE THE FOLLOWING REQUIREMENTS FOR PARTICIPATION:

30 1. UPPER MANAGEMENT LEADERSHIP AND ACTIVE AND MEANINGFUL EMPLOYEE
31 INVOLVEMENT.

32 2. SYSTEMATIC ASSESSMENT OF OCCUPATIONAL HAZARDS.

33 3. COMPREHENSIVE HAZARD PREVENTION, MITIGATION AND CONTROL
34 PROGRAMS.

35 4. EMPLOYEE SAFETY AND HEALTH TRAINING.

36 5. SAFETY AND HEALTH PROGRAM EVALUATION BY THE DIVISION TO ENSURE
37 THAT A WORKPLACE CONTINUOUSLY MEETS THE STANDARDS AND REGULATIONS.

38 B. APPLICATIONS FOR PARTICIPATION IN THE PROGRAM SHALL BE SUBMITTED
39 BY THE WORKPLACE'S MANAGEMENT. APPLICATIONS SHALL INCLUDE DOCUMENTATION
40 ESTABLISHING TO THE SATISFACTION OF THE DIVISION THAT THE EMPLOYER MEETS
41 ALL REQUIREMENTS FOR PROGRAM PARTICIPATION.

42 C. THE DIVISION SHALL PROVIDE FOR ON-SITE EVALUATIONS BY THE
43 DIVISION'S CONSULTATION SECTION OF EACH WORKPLACE THAT HAS APPLIED TO
44 PARTICIPATE IN THE PROGRAM TO DETERMINE THAT THE APPLICANT'S WORKPLACE
45 COMPLIES WITH THE REQUIREMENTS FOR PROGRAM PARTICIPATION.

1 D. A WORKPLACE'S CONTINUED PARTICIPATION IN THE PROGRAM IS
2 CONDITIONED ON COMPLIANCE WITH THE REQUIREMENTS FOR PROGRAM PARTICIPATION,
3 AS DETERMINED BY PERIODIC, PLANNED ON-SITE EVALUATIONS BY THE DIVISION.

4 E. DURING PERIODS IN WHICH A WORKPLACE IS A PROGRAM PARTICIPANT,
5 THE WORKPLACE IS EXEMPT FROM INSPECTIONS OR INVESTIGATIONS UNDER SECTION
6 23-408. THIS EXCEPTION DOES NOT APPLY TO INSPECTIONS OR INVESTIGATIONS OF
7 THE WORKPLACE ARISING FROM COMPLAINTS, REFERRALS, FATALITIES,
8 CATASTROPHES, NONFATAL ACCIDENTS OR SIGNIFICANT TOXIC CHEMICAL RELEASES.

9 F. ANY WORKPLACE THAT WAS A PARTICIPANT IN THE UNCODIFIED VOLUNTARY
10 PROTECTION PROGRAM OR ANY OTHER PROGRAM THAT IMPLEMENTS A MODEL SYSTEM
11 CONDUCTED BY THE DIVISION BEFORE THE EFFECTIVE DATE OF THIS SECTION MAY
12 CONTINUE AS A PARTICIPANT IN THE PROGRAM ESTABLISHED PURSUANT TO THIS
13 SECTION. BEGINNING ON THE EFFECTIVE DATE OF THIS SECTION, THE CONTINUED
14 PARTICIPATION BY SUCH A WORKPLACE IN THE PROGRAM IS CONDITIONED ON THE
15 WORKPLACE'S COMPLIANCE WITH THE REQUIREMENTS FOR PROGRAM PARTICIPATION
16 ADOPTED BY THE DIVISION.

17 G. THE PROGRAM ESTABLISHED BY THIS SECTION ENDS ON JULY 1, 2027
18 PURSUANT TO SECTION 41-3102.

19 Sec. 11. Heading change

20 The article heading of title 23, chapter 2, article 11, Arizona
21 Revised Statutes, is changed from "SAFETY CONDITIONS FOR BOILERS AND LINED
22 HOT WATER STORAGE HEATERS" to "SAFETY CONDITIONS FOR BOILERS, PRESSURE
23 VESSELS AND LINED HOT WATER HEATERS".

24 Sec. 12. Section 23-471, Arizona Revised Statutes, is amended to
25 read:

26 23-471. Definitions

27 In this article, unless the context otherwise requires:

28 1. "Authorized representative" means the boiler chief and boiler
29 inspector employed by the division.

30 2. "BOILER" MEANS A CLOSED VESSEL IN WHICH WATER OR OTHER LIQUID IS
31 HEATED, STEAM OR VAPOR IS GENERATED OR STEAM OR VAPOR IS SUPERHEATED, OR
32 ANY COMBINATION THEREOF, UNDER PRESSURE OR VACUUM FOR A USE THAT IS
33 EXTERNAL TO ITSELF, BY THE DIRECT APPLICATION OF HEAT FROM THE COMBUSTION
34 OF FUELS OR FROM ELECTRICITY.

35 ~~2.~~ 3. "Certificate" means a certificate of competency.

36 ~~3.~~ 4. "Certificate inspection" means an internal inspection, when
37 construction permits, otherwise it means as complete an inspection as
38 possible.

39 ~~4.~~ 5. "Commission" means the industrial commission of Arizona.

40 ~~5.~~ 6. "Director" means the director of the division of
41 occupational safety and health.

42 ~~6.~~ 7. "Division" means the division of occupational safety and
43 health of the commission.

44 ~~7.~~ 8. "Heating boilers" means a steam or vapor boiler operating at
45 a pressure not exceeding fifteen pounds per square inch or a hot water

1 boiler operating at a pressure not exceeding one hundred sixty pounds per
2 square inch or a temperature not exceeding two hundred fifty degrees
3 Fahrenheit.

4 ~~8.~~ 9. "High temperature water boiler" means a water boiler
5 intended for operation at pressures in excess of one hundred sixty pounds
6 per square inch or temperatures in excess of two hundred fifty degrees
7 Fahrenheit.

8 ~~9.~~ 10. "Interested party" means the commission, agents of the
9 commission and any owner or operator who has been issued a notice of
10 violation.

11 ~~10.~~ 11. "Lined hot water ~~storage~~ heater" means a fired lined water
12 heater with linings providing corrosion resistance for supplying potable
13 hot water for commercial purposes. Lined hot water ~~storage~~ heaters are
14 exempted when none of the following limitations are exceeded:

15 (a) Heat input of two hundred thousand British thermal units per
16 hour.

17 (b) Water temperature of two hundred ten degrees Fahrenheit.

18 (c) Nominal water-containing capacity of one hundred twenty
19 gallons.

20 ~~11.~~ 12. "Owner" or "Operator" means any individual or type of
21 organization, including this state and all political subdivisions of this
22 state, ~~who~~ THAT has title to or controls, or has the duty to control, the
23 operation of one or more boilers, **PRESSURE VESSELS** or lined hot water
24 ~~storage~~ heaters.

25 ~~12.~~ 13. "Power boiler" means a boiler in which steam or other vapor
26 is generated at a pressure more than fifteen pounds per square inch.

27 14. "**PRESSURE VESSEL**" MEANS A CONTAINER FOR THE CONTAINMENT OF
28 PRESSURE, EITHER INTERNAL OR EXTERNAL. THE PRESSURE MAY BE OBTAINED FROM
29 AN EXTERNAL SOURCE, OR BY THE APPLICATION OF HEAT FROM A DIRECT OR
30 INDIRECT SOURCE, OR ANY COMBINATION THEREOF.

31 ~~13.~~ 15. "Process boiler" means a heating boiler or a power boiler
32 used for processing purposes where the ~~make-up~~ **MAKE-UP** water exceeds ten
33 ~~per cent~~ **PERCENT**.

34 Sec. 13. Section 23-473, Arizona Revised Statutes, is amended to
35 read:

36 **23-473. Owner's and operator's duty**

37 Every owner or operator of any boiler, **PRESSURE VESSEL** or lined hot
38 water ~~storage~~ heater shall:

39 1. Furnish, maintain and provide safe and adequate boilers,
40 **PRESSURE VESSELS** or lined hot water ~~storage~~ heaters.

41 2. Comply with all standards and regulations issued pursuant to
42 this article.

1 Sec. 14. Section 23-475, Arizona Revised Statutes, is amended to
2 read:

3 **23-475. Duties of division**

4 The division shall:

- 5 1. Certify special inspectors as provided in section 23-485.
- 6 2. Inspect boilers, **PRESSURE VESSELS** and lined hot water ~~storage~~
7 heaters under this article, except that beginning on July 1, 2017 the
8 division may not inspect boilers, **PRESSURE VESSELS** and lined hot water
9 ~~storage~~ heaters.

10 3. Establish a schedule to require regular boiler, **PRESSURE VESSEL**
11 and lined hot water ~~storage~~ heater inspections.

12 4. Recommend standards, regulations and amendments to the standards
13 and regulations to the commission for approval or disapproval.

14 5. Enforce, under section 23-478, all standards and regulations
15 adopted by the commission.

16 Sec. 15. Section 23-478, Arizona Revised Statutes, is amended to
17 read:

18 **23-478. Enforcement**

19 A. If the division, following an inspection or investigation
20 determines that there is reasonable cause to believe that there exists a
21 violation of a standard or regulation the division shall issue a notice of
22 violation directing any repairs, improvements, changes or additions
23 necessary to eliminate the hazard. Each notice of violation shall be in
24 writing, delivered either by mail or in person and shall contain the
25 following:

26 1. A particular description of the nature of the violation,
27 including a reference to the provision of this article or of any standard
28 or regulation alleged to have been violated.

29 2. A reasonable time for the abatement of the violation.

30 B. Each notice of violation issued pursuant to this section or a
31 copy or copies of such notice of violation shall be prominently posted at
32 or near each place a violation referred to in the notice of violation
33 existed.

34 C. If in the opinion of the director or the director's authorized
35 representative the continued operation of the defective boiler, **PRESSURE**
36 **VESSEL** or lined hot water ~~storage~~ heater constitutes an immediate danger
37 to the safety of the occupants of the establishment or the persons
38 operating such boiler, **PRESSURE VESSEL** or lined hot water ~~storage~~ heater
39 the director or director's authorized representative may condemn such
40 device and require ~~it~~ **THE BOILER, PRESSURE VESSEL OR LINED HOT WATER**
41 **HEATER** to be returned to a condition allowing safe operation before ~~its~~
42 **use OF THE BOILER, PRESSURE VESSEL OR LINED HOT WATER HEATER** is resumed.

43 D. ~~Upon~~ **ON** failure of an owner or operator to comply with either
44 the requirements of a notice of violation issued pursuant to subsection A
45 **OF THIS SECTION** or condemnation pursuant to this subsection, the

1 commission may file an action in the superior court ~~or~~ IN the county where
2 the violation occurred to enjoin the owner or operator from engaging in
3 further acts in violation of the requirements of ~~this~~ THE notice of
4 violation or the condemnation. Any person found to be in contempt of an
5 injunctive order of the court shall be fined not less than fifty nor more
6 than three hundred dollars with each day of violation constituting a
7 separate contempt.

8 Sec. 16. Section 23-485, Arizona Revised Statutes, is amended to
9 read:

10 23-485. Special inspectors: civil liability

11 A. The division, ~~upon~~ ON the request of any company ~~authorized to~~
12 ~~insure against loss from explosion of boilers or lined hot water storage~~
13 ~~heaters in this state~~ THAT HAS RECEIVED A CERTIFICATE OF ACCREDITATION
14 FROM EITHER THE NATIONAL BOARD OF BOILER AND PRESSURE VESSEL INSPECTORS OR
15 THE AMERICAN SOCIETY OF MECHANICAL ENGINEERS AS AN AUTHORIZED INSPECTION
16 AGENCY OR AN OWNER-USER INSPECTION ORGANIZATION, may issue to any
17 inspector of that company a certificate as a special inspector. ~~The~~
18 ~~division may also, upon the request of any company operating boilers or~~
19 ~~lined hot water storage heaters in this state, issue to any inspector of~~
20 ~~the company a certificate as a special inspector.~~ Before receiving a
21 certificate, the inspector must ~~satisfactorily pass a written examination~~
22 ~~given by the division~~ DEMONSTRATE THAT THE INSPECTOR HOLDS A CURRENT
23 COMMISSION ISSUED BY THE NATIONAL BOARD OF BOILER AND PRESSURE VESSEL
24 INSPECTORS.

25 B. ~~A certificate as a special inspector in this state shall be~~
26 ~~issued, in lieu of such examination, if the inspector holds a certificate~~
27 ~~of competency as an inspector of boilers or lined hot water storage~~
28 ~~heaters for a state that has a standard of examination substantially equal~~
29 ~~to that of this state or a commission as an inspector of boilers and~~
30 ~~pressure vessels issued by the national board of boiler and pressure~~
31 ~~vessel inspectors.~~

32 C. A certificate as a special inspector for a company operating
33 boilers, PRESSURE VESSELS or lined hot water ~~storage~~ heaters in this state
34 shall be issued only if, in addition to meeting the requirements of this
35 section, the inspector is employed full time by such company and the
36 inspector's duties include making inspections of boilers, PRESSURE VESSELS
37 or lined hot water ~~storage~~ heaters to be used by such company and not for
38 resale.

39 D. C. Each company employing such special inspectors, within sixty
40 days ~~following~~ AFTER each boiler ~~certificate~~, PRESSURE VESSEL OR LINED HOT
41 WATER HEATER inspection made by the inspectors, shall file a report of the
42 inspection with the division ~~upon~~ ON appropriate forms OR MAKE ENTRY INTO
43 THE DIVISION'S COMPUTER DATABASE. ~~Reports of external inspections shall~~
44 ~~not be required except when such inspections disclose that the boiler or~~
45 ~~lined hot water storage heater is in a dangerous condition.~~

1 ~~F.~~ D. All insurance companies shall notify the division of all
2 boilers, **PRESSURE VESSELS** or lined hot water ~~storage~~ heaters ~~upon~~ ON which
3 insurance is written. All insurance companies shall also notify the
4 division of all boilers, **PRESSURE VESSELS** or hot water ~~storage~~ heaters
5 ~~upon~~ ON which insurance is cancelled, not renewed or suspended because of
6 unsafe conditions.

7 ~~F.~~ E. The furnishing of ~~boiler~~ A certificate ~~inspections~~
8 **INSPECTION**, as authorized by the commission pursuant to section 23-475,
9 that ~~are~~ IS conducted incidental to the issuance or renewal of boiler and
10 machinery insurance **OR A CONTRACTUAL CERTIFICATE INSPECTION** when performed
11 in accordance with the standards and regulations adopted by the commission
12 shall not subject an insurer, **A NONINSURER**, whether domestic or foreign,
13 **OR A CONTRACTED INSPECTION ORGANIZATION**, its agents or its employees to
14 liability for damages for any act or omission in the course of performing
15 inspections as provided by this section. This ~~section~~ **SUBSECTION** does not
16 apply if the gross negligence of the insurer, **NONINSURER OR CONTRACTED**
17 **INSPECTION ORGANIZATION**, its agent or its employee created the condition
18 that was the proximate cause of the injury, death or loss.

19 Sec. 17. Section 23-486, Arizona Revised Statutes, is amended to
20 read:

21 **23-486. Boiler advisory board: members: terms: meetings**

22 A. The boiler advisory board is established to assist the
23 commission in drafting standards and regulations for boilers, **PRESSURE**
24 **VESSELS** and lined hot water ~~storage~~ heaters. The boiler advisory board
25 consists of the following members who are appointed by the commission:

- 26 1. One member who represents the boiler, **PRESSURE VESSEL** or lined
27 hot water ~~storage~~ heater manufacturer industry.
- 28 2. One member who represents a public utility.
- 29 3. One member who represents the insurance industry.
- 30 4. One member who is an owner or operator of a boiler, **PRESSURE**
31 **VESSEL** or lined hot water ~~storage~~ heater.
- 32 5. One member who is a licensed contractor.

33 B. The initial members of the boiler advisory board shall assign
34 themselves by lot to terms of one or two years in office. All subsequent
35 members serve three-year terms of office. The chairperson shall notify
36 the commission of these appointments.

37 C. The boiler advisory board shall annually elect a chairperson
38 from its members.

39 D. The boiler advisory board shall meet at least annually and on
40 the call of the commission. The commission shall determine the time and
41 place of boiler advisory board meetings.

1 Sec. 18. Section 23-488, Arizona Revised Statutes, is amended to
2 read:

3 **23-488. Division inspection service**

4 A. The division may enter into agreements to provide inspection
5 services during the manufacture, assembly, erection, or repair of boilers,
6 **PRESSURE VESSELS**, lined hot water **storage** heaters or any appurtenant
7 components to such boilers, **PRESSURE VESSELS** or heaters whenever such
8 inspections are requested by holders of authorized symbols of American
9 society of mechanical engineers or the national board of boiler and
10 pressure vessel inspectors.

11 B. The commission, through the division, may fix and collect
12 inspection fees **which THAT** shall be determined on the basis of an hourly
13 rate for inspection plus reimbursement for actual expenses incurred,
14 provided that no hourly rate for inspection shall exceed thirty dollars
15 per hour.

16 C. The commission shall deposit, pursuant to sections 35-146 and
17 35-147, all fees received in the state general fund.

18 Sec. 19. Section 23-491, Arizona Revised Statutes, is amended to
19 read:

20 **23-491. Definitions**

21 In this article, unless the context otherwise requires:

22 1. "Authorized representative" means the elevator chief and
23 elevator inspector employed by the division.

24 **2. "Board" means the elevator advisory board established to assist**
25 **the commission in drafting standards and regulations.**

26 **3.** 2. "Certificate" means a certificate of inspection issued by
27 the division.

28 **4.** 3. "Commission" means the industrial commission of Arizona.

29 **5.** 4. "Conveyance" means an elevator, dumbwaiter, escalator,
30 moving walk, manlift, personnel hoist, material hoist, stage lift and
31 special purpose personnel elevator, excluding conveyances located at mines
32 and subject to regulation and inspection by the state mine inspector
33 pursuant to title 27, chapter 3.

34 **6.** 5. "Director" means the director of the division of
35 occupational safety and health.

36 **7.** 6. "Division" means the division of occupational safety and
37 health of the industrial commission.

38 **8.** 7. "Dumbwaiter" means a hoisting and lowering mechanism with a
39 car of limited capacity and size that moves in guides in a substantially
40 vertical direction and that is used exclusively for carrying material.

41 **9.** 8. "Elevator" means a hoisting and lowering mechanism equipped
42 with a car or platform that moves in guides in substantially vertical
43 direction and that serves two or more floors of a building or structure.

1 ~~10.~~ 9. "Elevator company" means a person that is engaged in the
2 business of erecting, constructing, installing, altering, servicing,
3 repairing or maintaining conveyances.

4 ~~11.~~ 10. "Escalator" means a power driven, inclined, continuous
5 stairway used for raising or lowering passengers.

6 ~~12.~~ 11. "Interested party" means the commission and its agents and
7 the owner or operator who has been issued a correction order.

8 ~~13.~~ 12. "Manlift" means a device consisting of a power driven
9 endless belt moving in one direction only and provided with steps or
10 platforms and attached handholds for the transportation of personnel from
11 floor to floor.

12 ~~14.~~ 13. "Material hoist" means a hoist for raising and lowering
13 materials only and prohibiting the hoisting of persons.

14 ~~15.~~ 14. "Moving walk" means a type of passenger carrying device on
15 which passengers stand or walk and in which the passenger carrying surface
16 remains parallel to its direction of motion and is uninterrupted.

17 ~~16.~~ 15. "Owner" or "operator" means an individual or organization
18 including this state and all political subdivisions of this state who has
19 title to, controls or has the duty to control the operation of one or more
20 conveyances, but shall not include an individual or organization engaged
21 in mining or metallurgical operations whose operation is subject to
22 regulation and inspection by the state mine inspector pursuant to title
23 27, chapter 3.

24 ~~17.~~ 16. "Personnel hoist" means a mechanism for use in connection
25 with the construction, alteration, maintenance or demolition of a
26 building, structure or other work, used for hoisting and lowering workers
27 and materials and equipped with a car that moves on guide members during
28 its vertical movement. The term includes a hoistway of a personnel hoist.

29 ~~18.~~ 17. "Private elevator inspector" means an individual who is
30 authorized by the commission under section 23-491.16 to conduct
31 inspections under this article.

32 ~~19.~~ 18. "Special purpose personnel elevator" means a passenger,
33 hand powered, counterweighted device or an electric powered device that
34 travels vertically in guides and that serves two or more landings.

35 ~~20.~~ 19. "Stage lift" means a hoisting and lowering mechanism
36 equipped with a platform that moves in guides in a substantially vertical
37 direction and that serves one or more landings.

38 Sec. 20. Section 23-491.04, Arizona Revised Statutes, is amended to
39 read:

40 23-491.04. Commission powers and duties

41 A. The commission shall:

42 1. Administer ~~the provisions of~~ this article through the division
43 of occupational safety and health.

44 ~~2. Establish an elevator advisory board to assist the commission in
45 drafting standards and regulations.~~

1 3. 2. Promulgate standards and regulations pursuant to section
2 ~~23-491.05~~ 23-491.06 as required and promulgate such other rules and
3 regulations and exercise such other powers as are necessary to carry out
4 ~~the provisions of~~ this article.

5 B. The commission ~~may~~, by rule and regulation, ~~MAY~~ set fees not to
6 exceed the actual cost for inspections performed pursuant to this article.

7 Sec. 21. Section 23-491.06, Arizona Revised Statutes, is amended to
8 read:

9 23-491.06. Development of standards and regulations

10 A. Safety standards and regulations shall be formulated in the
11 following manner:

12 1. The division shall either propose adoption of national ~~concensus~~
13 ~~CONSENSUS~~ standards or federal standards or draft such regulations as it
14 considers necessary after conducting sufficient investigations through the
15 division's employees and through consultation with ~~the board~~ and other
16 persons knowledgeable in the business for which the standards or
17 regulations are being formulated.

18 2. Proposed standards or regulations, or both, shall be submitted
19 to the commission for ~~its~~ approval.

20 B. Any person who may be adversely affected by a standard or
21 regulation issued under this article may, at any time within sixty days
22 after such standard or regulation is promulgated by the commission, file a
23 complaint challenging the validity of such standard or regulation with the
24 superior court ~~or~~ IN the county in which the person resides or has ~~its~~ THE
25 ~~PERSON'S~~ principal place of business, for a judicial review of such
26 standard or regulation. The filing of ~~such~~ a complaint shall not, unless
27 otherwise ordered by the court, operate as a stay of the standard or
28 regulation. The determinations of the commission shall be conclusive if
29 supported by substantial evidence in the record considered as a whole.

30 C. In case of conflict between standards and regulations, the
31 regulations shall take precedence.

32 Sec. 22. Conditional enactment: notice

33 A. Section 23-422, Arizona Revised Statutes, as amended by section
34 8 of this act, becomes effective only if on or before December 31, 2019
35 the federal occupational safety and health administration publishes in the
36 federal register pursuant to 29 Code of Federal Regulations section
37 1902.23 a final decision rendered under 29 Code of Federal Regulations
38 section 1902.22 and pursuant to 29 Code of Federal Regulations part 1953
39 to reject the changes to this state's occupational safety and health plan
40 prescribed in section 23-422, Arizona Revised Statutes, as amended by
41 section 7 of this act, that results in the exclusion of the changes from
42 this state's federally approved occupational safety and health plan.

1 B. The director of the industrial commission of Arizona shall
2 notify in writing the director of the Arizona legislative council on or
3 before April 1, 2020 either:

4 1. Of the date on which the condition in subsection A of this
5 section was met.

6 2. That the condition was not met.

APPROVED BY THE GOVERNOR APRIL 10, 2017.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 10, 2017.