HB 2501

Introduced by
Representatives Boyer: Payne, Shope

AN ACT

AMENDING SECTIONS 23-901 AND 23-1061, ARIZONA REVISED STATUTES; AMENDING TITLE 23, CHAPTER 6, ARTICLE 12, ARIZONA REVISED STATUTES, BY ADDING SECTION 23-1106; AMENDING SECTION 38-672, ARIZONA REVISED STATUTES; REPEALING LAWS 2016, CHAPTER 240, SECTION 2; RELATING TO WORKERS' COMPENSATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

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

23-901. Definitions
In this chapter, unless the context otherwise requires:
1. "Award" means the finding or decision of an administrative law judge or the commission as to the amount of compensation or benefit due an injured employee or the dependents of a deceased employee.
2. "Client" means an individual, association, company, firm, partnership, corporation or any other legally recognized entity that is subject to this chapter and that enters into a professional employer agreement with a professional employer organization.
3. "Co-employee" means every person employed by an injured employee's employer.
5. "Compensation" means the compensation and benefits provided by this chapter.
6. "Employee", "workman", "worker" and "operative" means:
   (a) Every person in the service of the state or a county, city, town, municipal corporation or school district, including regular members of lawfully constituted police and fire departments of cities and towns, whether by election, appointment or contract of hire.
   (b) Every person in the service of any employer subject to this chapter, including aliens and minors legally or illegally permitted to work for hire, but not including a person whose employment is both:
      (i) Casual.
      (ii) Not in the usual course of the trade, business or occupation of the employer.
   (c) Lessees of mining property and the lessees' employees and contractors engaged in the performance of work that is a part of the business conducted by the lessor and over which the lessor retains supervision or control are within the meaning of this paragraph employees of the lessor, and are deemed to be drawing wages as are usually paid employees for similar work. The lessor may deduct from the proceeds of ores mined by the lessees the premium required by this chapter to be paid for such employees.
   (d) Regular members of volunteer fire departments organized pursuant to title 48, chapter 5, article 1, regular firefighters of any volunteer fire department, including private fire protection service organizations, organized pursuant to title 10, chapters 24 through 40, volunteer firefighters serving as members of a fire department of any incorporated city or town or an unincorporated area without pay or without full pay and on a part-time basis, and voluntary policemen peace officers and volunteer firefighters serving in any incorporated city, town or unincorporated area without pay or without full pay and on a
part-time basis, are deemed to be employees, but for the purposes of this chapter, the basis for computing wages for premium payments and compensation benefits for regular members of volunteer fire departments organized pursuant to title 48, chapter 5, article 1, or organized pursuant to title 10, chapters 24 through 40, regular members of any private fire protection service organization, volunteer firefighters and volunteer policemen peace officers of these departments or organizations shall be the salary equal to the beginning salary of the same rank or grade in the full-time service with the city, town, volunteer fire department or private fire protection service organization, provided if there is no full-time equivalent then the salary equivalent shall be as determined by resolution of the governing body of the city, town or volunteer fire department or corporation.

(e) Members of the department of public safety reserve, organized pursuant to section 41-1715, are deemed to be employees. For the purposes of this chapter, the basis for computing wages for premium payments and compensation benefits for a member of the department of public safety reserve who is a peace officer shall be the salary received by officers of the department of public safety for the officers' first month of regular duty as an officer. For members of the department of public safety reserve who are not peace officers, the basis for computing premiums and compensation benefits is four hundred dollars a month.

(f) Any person placed in on-the-job evaluation or in on-the-job training under the department of economic security’s temporary assistance for needy families program or vocational rehabilitation program shall be deemed to be an employee of the department for the purpose of coverage under the state workers' compensation laws only. The basis for computing premium payments and compensation benefits shall be two hundred dollars per month. Any person receiving vocational rehabilitation services under the department of economic security’s vocational rehabilitation program whose major evaluation or training activity is academic, whether as an enrolled attending student or by correspondence, or who is confined to a hospital or penal institution, shall not be deemed to be an employee of the department for any purpose.

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

(h) A working member of a partnership may be deemed to be an
employee entitled to the benefits provided by this chapter on written
acceptance, by endorsement, at the discretion of the insurance carrier for
the partnership of an application for coverage by the working partner.
The basis for computing premium payments and compensation benefits for the
working partner shall be an assumed average monthly wage of not less than
six hundred dollars nor more than the maximum wage provided in section
23-1041 and is subject to the discretionary approval of the insurance
carrier. Any compensation for permanent partial or permanent total
disability payable to the partner shall be computed on the lesser of the
assumed monthly wage agreed to by the insurance carrier on the acceptance
of the application for coverage or the actual average monthly wage
received by the partner at the time of injury.

(i) The sole proprietor of a business subject to this chapter may
be deemed to be an employee entitled to the benefits provided by this
chapter on written acceptance, by endorsement, at the discretion of the
insurance carrier of an application for coverage by the sole proprietor.
The basis for computing premium payments and compensation benefits for the
sole proprietor shall be an assumed average monthly wage of not less than
six hundred dollars nor more than the maximum wage provided by section
23-1041 and is subject to the discretionary approval of the insurance
carrier. Any compensation for permanent partial or permanent total
disability payable to the sole proprietor shall be computed on the lesser
of the assumed monthly wage agreed to by the insurance carrier on the
acceptance of the application for coverage or the actual average monthly
wage received by the sole proprietor at the time of injury.

(j) A member of the Arizona national guard, Arizona state guard or
unorganized militia shall be deemed a state employee and entitled to
coverage under the Arizona workers' compensation law at all times while
the member is receiving the payment of the member's military salary from
this state under competent military orders or on order of the governor.
Compensation benefits shall be based on the monthly military pay rate to
which the member is entitled at the time of injury, but not less than a
salary of four hundred dollars per month, nor more than the maximum
provided by the workers' compensation law. Arizona compensation benefits
shall not inure to a member compensable under federal law.
(k) Certified ambulance drivers and attendants who serve without pay or without full pay on a part-time basis are deemed to be employees and entitled to the benefits provided by this chapter and the basis for computing wages for premium payments and compensation benefits for certified ambulance personnel shall be four hundred dollars per month.

(l) Volunteer workers of a licensed health care institution may be deemed to be employees and entitled to the benefits provided by this chapter on written acceptance by the insurance carrier of an application by the health care institution for coverage of such volunteers. The basis for computing wages for premium payments and compensation benefits for volunteers shall be four hundred dollars per month.

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

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

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

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

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

8. "Heart-related or perivascular injury, illness or death" means myocardial infarction, coronary thrombosis or any other similar sudden, violent or acute process involving the heart or perivascular system, or any death resulting therefrom, and any weakness, disease or other condition of the heart or perivascular system, or any death resulting therefrom.
9. "Insurance carrier" means every insurance carrier duly
authorized by the director of insurance to write workers' compensation or
occupational disease compensation insurance in this state.

10. "Interested party" means the employer, the employee, or if the
employee is deceased, the employee's estate, the surviving spouse or
dependents, the commission, the insurance carrier or their representative.

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

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

13. "Personal injury by accident arising out of and in the course
of employment" means any of the following:
(a) Personal injury by accident arising out of and in the course of
employment.
(b) An injury caused by the wilful act of a third person directed
against an employee by the employee's employment, but does not
include a disease unless resulting from the injury.
(c) An occupational disease that is due to causes and conditions
characteristic of and peculiar to a particular trade, occupation, process
or employment, and not the ordinary diseases to which the general public
is exposed, and subject to ANY OF THE FOLLOWING:
(i) Section 23-901.01. or
(ii) For heart-related, perivascular or pulmonary cases, section
23-1105.
(iii) FOR POSTTRAUMATIC STRESS DISORDER CASES, SECTION 23-1106.
14. "POSTTRAUMATIC STRESS DISORDER" HAS THE SAME MEANING PRESCRIBED
IN THE MOST RECENT EDITION OF THE DIAGNOSTIC AND STATISTICAL MANUAL OF
MENTAL DISORDERS FOR THE AMERICAN PSYCHIATRIC ASSOCIATION.

15. "Professional employer agreement" means a written contract
between a client and a professional employer organization:
(a) In which the professional employer organization expressly
agrees to co-employ all or a majority of the employees providing services
for the client. In determining whether the professional employer
organization employs all or a majority of the employees of a client, any
person employed pursuant to the terms of the professional employer
agreement after the initial placement of client employees on the payroll
of the professional employer organization shall be included.
(b) That is intended to be ongoing rather than temporary in nature.
(c) In which employer responsibilities for worksite employees, including hiring, firing and disciplining, are expressly allocated between the professional employer organization and the client in the agreement.

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

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

17. "Special order" means an order other than a general order.

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

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

20. Sec. 2. Section 23-1061, Arizona Revised Statutes, is amended to read:

23-1061. Notice of accident; form of notice; claim for compensation; reopening; payment of compensation

A. Notwithstanding section 23-908, subsection E, no claim for compensation shall be IS NOT valid or enforceable unless the claim is filed with the commission by the employee, or if resulting in death by the parties entitled to compensation, or someone on their behalf, in writing within one year after the injury occurred or the right thereto accrued. The time for filing a compensation claim begins to run when the injury becomes manifest or when the claimant knows or in the exercise of reasonable diligence should know that the claimant has sustained a compensable injury, EXCEPT AN EMPLOYEE WHO IS RECEIVING ACTIVE TREATMENT PURSUANT TO SECTION 38-672 HAS ONE YEAR AFTER THE DATE OF THE LAST LICENSED COUNSELING VISIT PURSUANT TO SECTION 38-672 TO FILE A COMPENSATION CLAIM. Except as provided in subsection B of this section, neither the commission nor any court shall DOES NOT have jurisdiction to consider a claim which THAT is not timely filed under this subsection, except if the employee or other party entitled to file the claim has delayed in doing so because of justifiable reliance on a material representation by the commission, employer or insurance carrier or if the employee or other party entitled to file the claim is insane or legally incompetent or incapacitated at the time the injury occurs or the right to
compensation accrues or during the one-year period thereafter. If the
insanity or legal incompetence or incapacity occurs after the one-year
period has commenced, the running of the remainder of the one-year period
shall be suspended during the period of insanity or legal incompetence
or incapacity. If the employee or other party is insane or legally
incompetent or incapacitated when the injury occurs or the right to
compensation accrues, the one-year period commences to run immediately
upon the termination of insanity or legal incompetence or incapacity.
The commission receiving a claim shall give notice to the carrier.

B. Failure of an employee or any other party entitled to
compensation to file a claim with the commission within one year or to
comply with section 23-908 shall not bar a claim if the insurance carrier
or employer has commenced payment of compensation benefits under section
23-1044, 23-1045 or 23-1046, except that the payments provided for by
section 23-1046, subsection A, paragraph 1 and section 23-1065, subsection
A shall not be considered compensation benefits for the purposes of this
section.

C. If the commission receives a notification of the injury, the
commission shall send a claim form to the employee.

D. The issue of failure to file a claim must be raised at the first
hearing on a claim for compensation in respect to the injury or death.

E. Within ten days after receiving notice of an accident, the
employer shall inform his insurance carrier and the commission on such
forms as may be prescribed by the commission.

F. Each insurance carrier and self-insuring employer shall report
to the commission a notice of the first payment of compensation and shall
promptly report to the commission and to the employee by mail at his last
known address any denial of a claim, any change in the amount of
compensation and the termination thereof, except that claims for medical,
surgical and hospital benefits which are not denied shall be reported
to the commission in the form and manner determined by the commission. In
all cases where compensation is payable, the carrier or self-insuring
employer shall promptly determine the average monthly wage pursuant to
section 23-1041. Within thirty days of the payment of the first
installment of compensation, the carrier or self-insuring employer shall
notify the employee and commission of the average monthly wage of the
claimant as calculated, and the basis for such determination. The
commission shall then make its own independent determination of the
average monthly wage pursuant to section 23-1041. The commission shall
within thirty days after receipt of such notice notify the employee,
employer and carrier of such determination. The amount determined by the
commission shall be payable retroactive to the first date of entitlement.
The first payment of compensation shall be accompanied by a notice on a
form prescribed by the commission stating the manner in which the amount
of compensation was determined.
G. Except as otherwise provided by law, the insurance carrier or self-insuring employer shall process and pay compensation and provide medical, surgical and hospital benefits, without the necessity for the making of an award or determination by the commission.

H. On a claim that has been previously accepted, an employee may reopen the claim to secure an increase or rearrangement of compensation or additional benefits by filing with the commission a petition requesting the reopening of the employee's claim upon the basis of a new, additional or previously undiscovered temporary or permanent condition, which petition shall be accompanied by a statement from a physician setting forth the physical condition of the employee relating to the claim. A claim shall not be reopened if the initial claim for compensation was previously denied by a notice of claim status or determination by the commission and the notice or determination was allowed to become final and no exception applies under section 23-947 excusing a late filing to request a hearing. A claim shall not be reopened because of increased subjective pain if the pain is not accompanied by a change in objective physical findings. A claim shall not be reopened solely for additional diagnostic or investigative medical tests, but expenses for any reasonable and necessary diagnostic or investigative tests that are causally related to the injury shall be paid by the employer or the employer's insurance carrier. Expenses for reasonable and necessary medical and hospital care and laboratory work shall be paid by the employer or the employer's insurance carrier if the claim is reopened as provided by law and if these expenses are incurred within fifteen days of the date that the petition to reopen is filed. The payment for such reasonable and necessary medical, hospital and laboratory work expense shall be paid for by the employer or the employer's insurance carrier if the claim is reopened as provided by law and if such expenses are incurred within fifteen days of the filing of the petition to reopen. Surgical benefits are not payable for any period prior to the date of filing a petition to reopen, except that surgical benefits are payable for a period prior to the date of filing the petition to reopen not to exceed seven days if a bona fide medical emergency precludes the employee from filing a petition to reopen prior to the surgery. No monetary compensation is payable for any period prior to the date of filing the petition to reopen.

I. Upon the filing of a petition to reopen a claim the commission shall in writing notify the employer's insurance carrier or the self-insuring employer, which shall in writing notify the commission and the employee within twenty-one days after the date of notice of its acceptance or denial of the petition. The reopened claim shall be processed thereafter in like manner as a new claim.
J. The commission shall investigate and review any claim in which it appears to the commission that the claimant has not been granted the benefits to which such THE claimant is entitled. If the commission determines that payment or denial of compensation is improper in any way, it shall hold a hearing pursuant to section 23-941 within sixty days after receiving notice of such impropriety. Any claim for temporary partial disability benefits under this subsection must be filed with the commission within two years after the date the claimed entitlement to compensation accrued or within two years after the date on which an award for benefits encompassing the entitlement period becomes final. A claim for temporary partial disability compensation shall be deemed to accrue when the employee knew or with the exercise of reasonable diligence should have known that the carrier, self-insured employer or special fund denied or improperly paid compensation. A claim for temporary partial disability benefits shall not be deemed to have accrued any earlier than the effective date of this amendment to this subsection SEPTEMBER 26, 2008.

K. When there is a dispute as to which employer, or insurance carrier, is liable for the payment of a compensable claim, the commission, by order, may designate the employer or insurance carrier which THAT shall pay the claim. Payment shall begin within fourteen days after the employer or insurance carrier has been ordered by the commission to commence payment. When a final determination has been made as to which employer or insurance carrier is actually liable, the commission shall direct any necessary monetary adjustment or reimbursement among the parties or carriers involved.

L. Upon ON application to the commission, and for good cause shown, the commission may direct that a document filed as a claim for compensation benefits be designated as a petition to reopen, effective as of the original date of filing. In like manner upon ON application and good cause shown, the commission may direct that a document filed as a petition to reopen be designated a claim for compensation benefits, effective as of the original date of filing.

M. If the insurance carrier or self-insurer does not issue a notice of claim status denying the claim within twenty-one days from the date the carrier is notified by the commission of a claim or of a petition to reopen, the carrier shall pay immediately compensation as if the claim were accepted, from the date the carrier is notified by the commission of a claim or petition to reopen until the date upon ON which the carrier issues a notice of claim status denying such claim. Compensation includes medical, surgical and hospital benefits. This section shall DOES not apply to cases involving seven days or less of time lost from work.
Sec. 3. Title 23, chapter 6, article 12, Arizona Revised Statutes, is amended by adding section 23-1106, to read:

23-1106. Posttraumatic stress disorder; first responders; presumption; definition

A. POSTTRAUMATIC STRESS DISORDER IS PRESUMED TO BE AN OCCUPATIONAL DISEASE AS DESCRIBED IN SECTION 23-901, PARAGRAPH 13, SUBDIVISION (c), COMPENSABLE PURSUANT TO SECTION 23-1043.01 AND DEEMED TO ARISE OUT OF AND IN THE COURSE OF EMPLOYMENT IF ALL OF THE FOLLOWING APPLY:

1. THE FIRST RESPONDER IS RECEIVING OR HAS RECEIVED LICENSED COUNSELING PURSUANT TO SECTION 38-672.

2. THE LICENSED MENTAL HEALTH PROFESSIONAL PROVIDING TREATMENT PURSUANT TO SECTION 38-672 DETERMINES THAT THE FIRST RESPONDER HAS POSTTRAUMATIC STRESS DISORDER RESULTING FROM THE PERFORMANCE OF THE FIRST RESPONDER’S JOB DUTIES.

B. THE PRESUMPTION PROVIDED IN SUBSECTION A OF THIS SECTION MAY BE REBUTTED BY A PREPONDERANCE OF THE EVIDENCE THAT THERE IS A SPECIFIC CAUSE OF THE POSTTRAUMATIC STRESS DISORDER OTHER THAN THE SERVICE-CONNECTED EXPOSURE.

C. FOR THE PURPOSES OF THIS SECTION, “FIRST RESPONDER” MEANS ANY OF THE FOLLOWING:

1. A PEACE OFFICER WHO IS ELIGIBLE TO RECEIVE TREATMENT PURSUANT TO SECTION 38-672.

2. A FIREFIGHTER WHO IS ELIGIBLE TO RECEIVE TREATMENT PURSUANT TO SECTION 38-672.

3. A RESCUE OR AMBULANCE WORKER WHO IS A MEMBER OF ANY PUBLIC RETIREMENT SYSTEM AND WHO IS ELIGIBLE TO RECEIVE TREATMENT PURSUANT TO SECTION 38-672.

Sec. 4. Section 38-672, Arizona Revised Statutes, is amended to read:

38-672. Traumatic event counseling for public safety employees; exceptions; definitions

A. Notwithstanding any other law, this state or a political subdivision of this state shall establish a program to provide any of the following persons who are exposed to any one of the following events while in the course of duty up to twelve visits of licensed counseling, which may be provided via telemedicine, paid for by the employer:

1. In the case of the peace officer, the use of deadly force or subjection to deadly force in the line of duty, regardless of whether the officer was physically injured.

2. In the case of a firefighter, witnessing the death of another firefighter while engaged in the line of duty.

3. 1. In the case of ANY public safety employee:

(a) Visually witnessing the death or maiming or visually witnessing the immediate aftermath of such a death or maiming of one or more human beings.
(b) Responding to or being directly involved in a criminal investigation of AN OFFENSE INVOLVING a dangerous crime against a child punishable under CHILDREN AS DEFINED IN section 13-705.

(c) Requiring rescue in the line of duty where one's life was endangered.

(d) USING DEADLY FORCE OR BEING SUBJECTED TO DEADLY FORCE IN THE LINE OF DUTY, REGARDLESS OF WHETHER THE PUBLIC SAFETY EMPLOYEE WAS PHYSICALLY INJURED.

(e) WITNESSING THE DEATH OF ANOTHER PUBLIC SAFETY EMPLOYEE WHILE ENGAGED IN THE LINE OF DUTY.

2. IN THE CASE OF A FIREFIGHTER OR PEACE OFFICER, BEING EXPOSED TO A PSYCHOLOGICALLY TRAUMATIC EVENT OR SERIES OF PSYCHOLOGICALLY TRAUMATIC EVENTS IN THE COURSE OF THE FIREFIGHTER’S OR PEACE OFFICER’S EMPLOYMENT.

B. IF THE LICENSED MENTAL HEALTH PROFESSIONAL DETERMINES THAT THE PUBLIC SAFETY EMPLOYEE NEEDS ADDITIONAL VISITS OF LICENSED COUNSELING BEYOND THAT WHICH THE PUBLIC SAFETY EMPLOYEE IS ENTITLED TO UNDER SUBSECTION A OF THIS SECTION, THE EMPLOYER SHALL PAY FOR THE ADDITIONAL VISITS.

C. AN EMPLOYER MAY NOT:

1. SUBJECT A PUBLIC SAFETY EMPLOYEE WHO IS RECEIVING TREATMENT PURSUANT TO THIS SECTION AND WHO HAS NOT FILED A CLAIM FOR WORKERS’ COMPENSATION TO AN INDEPENDENT MEDICAL EXAMINATION.

2. REQUIRE A PUBLIC SAFETY EMPLOYEE WHO IS RECEIVING TREATMENT PURSUANT TO THIS SECTION TO USE THE PUBLIC SAFETY EMPLOYEE’S ACCRUED PAID VACATION, PERSONAL LEAVE OR SICK LEAVE IF THE PUBLIC SAFETY EMPLOYEE LEAVES WORK TO RECEIVE TREATMENT PURSUANT TO THIS SECTION.

D. IF THE LICENSED MENTAL HEALTH PROFESSIONAL DETERMINES THAT THE PUBLIC SAFETY EMPLOYEE IS NOT FIT TO RETURN TO WORK WHILE THE PUBLIC SAFETY EMPLOYEE IS RECEIVING TREATMENT PURSUANT TO THIS SECTION, THE EMPLOYER SHALL CONTINUE TO PROVIDE THE PUBLIC SAFETY EMPLOYEE WITH THE SAME PAY AND BENEFITS THAT THE PUBLIC SAFETY EMPLOYEE WAS RECEIVING BEFORE THE PUBLIC SAFETY EMPLOYEE STARTED TREATMENT.

E. AN EMPLOYER SHALL ALLOW A PUBLIC SAFETY EMPLOYEE TO SELECT THE PUBLIC SAFETY EMPLOYEE’S OWN LICENSED MENTAL HEALTH PROFESSIONAL, EXCEPT THAT IF A LICENSED MENTAL HEALTH PROFESSIONAL DECLINES TO PROVIDE COUNSELING PURSUANT TO THIS SECTION, THE EMPLOYER IS NOT REQUIRED TO SECURE THE SERVICES OF THAT LICENSED MENTAL HEALTH PROFESSIONAL. THE EMPLOYER SHALL PAY THE LICENSED MENTAL HEALTH PROFESSIONAL PURSUANT TO THE SCHEDULE OF FEES THAT IS FIXED BY THE INDUSTRIAL COMMISSION OF ARIZONA PURSUANT TO SECTION 23-908.

F. EXCEPT AS PROVIDED IN SECTION 23-1106, payment by the employer for licensed counseling pursuant to this section does not create a presumption that a claim is compensable under section 23-1043.01, subsection B.
C. G. This section does not apply to a state employer that provides a program to its public safety employees that is characterized by all of the following:

1. The program is paid for by the employer.
2. The program provides licensed counseling for any issue. For licensed counseling related to trauma experienced while in the line of duty, the licensed counseling is provided on the request of the public safety employee and shall be in person.
3. Before July 1, 2017, the program offers at least six visits per year.
4. On or after July 1, 2017, the program offers at least twelve visits per year AND WILL OFFER ADDITIONAL VISITS IF THE LICENSED MENTAL HEALTH PROFESSIONAL DETERMINES THAT ADDITIONAL VISITS ARE NECESSARY.

D. H. For the purposes of this section:
1. "Licensed counseling" means counseling provided by a licensed mental health professional pursuant to title 32, chapter 19.1 or chapter 33 if licensees under title 32, chapter 33 have training and expertise in treating trauma.
2. "LICENSED MENTAL HEALTH PROFESSIONAL" MEANS A PERSON WHO PROVIDES LICENSED COUNSELING.
3. "Public safety employee" means:
   (a) An individual who is a member of the public safety personnel retirement system or the corrections officer retirement plan.
   (b) A probation officer, surveillance officer or juvenile detention officer who is employed by this state or a political subdivision of this state.
   (c) A RESCUE OR AMBULANCE WORKER WHO IS A MEMBER OF ANY PUBLIC RETIREMENT SYSTEM.

Sec. 5. Repeal

Laws 2016, chapter 240, section 2 is repealed.