House Engrossed Senate Bill

wage rates, technical correction
(now: labor organizations; fiduciary guidelines; definitions)
(now: labor benefits organizations; damages; definitions)

State of Arizona
Senate
Fifty-fifth Legislature
Second Regular Session
2022

CHAPTER 255

SENATE BILL 1278

AN ACT

REPEALING SECTION 23-1421, ARIZONA REVISED STATUTES; AMENDING TITLE 23,
CHAPTER 8, ARTICLE 7, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION
23-1421; RELATING TO LABOR ORGANIZATIONS.

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

Section 1. **Repeal**

Section 23-1421, Arizona Revised Statutes, is repealed.

Sec. 2. Title 23, chapter 8, article 7, Arizona Revised Statutes, is amended by adding a new section 23-1421, to read:

23-1421. Third-party benefits organizations; damages; exemptions; exclusive remedy; statute of limitations; applicability; definitions

A. An employee who has suffered calculated damages may recover three times the calculated damages from a third-party benefits organization for the cost of benefits paid by the employee. An employer that has suffered calculated damages may recover three times the calculated damages from a third-party benefits organization that paid for the cost of employee benefits. The calculated damages are as follows:

1. For health, pension or vacation or sick leave benefits, any monies paid by or for the employee during a twelve-month period that is more than one hundred twenty percent of the cost of equivalent health, pension or vacation or sick leave benefits. To show equivalency, the plaintiff may submit a mathematical or an actuarial data analysis that demonstrates that the employee would have received at least ninety-five percent of the same value from a product available through the employer or on the general market.

2. For training benefits, any monies paid by the employer or employee in excess of one hundred twenty percent of any reasonable training costs incurred during a twelve-month period for the specific benefit of the employee's job skill.

3. For any other benefit, any monies paid by the employer or employee in excess of $1,000 during a twelve-month period where no direct benefit can be attributed to the employee.

B. An employee may recover calculated damages attributable to monies paid by the employee's employer for that employee if:

1. The employee sends a certified letter to the employer's statutory agent in this state that advises the employer that the employee intends to pursue such a claim unless the employer objects within ninety days.

2. The employer does not object. An employer's failure to object in writing within ninety days constitutes a waiver of the employer's right to recover pursuant to this section to the extent of the employee's recovery.

C. A third-party benefits organization is not liable pursuant to this section if the third-party benefits organization satisfies all of the following:

1. Provides a reconciliation to its member employees through United States mail or email that would reasonably allow an employee to determine
THE COSTS AND EXPENSES OF THE BENEFITS. THE RECONCILIATION MUST BE LISTED  
BY BENEFIT FOR A TWELVE-MONTH PERIOD AND PROVIDE THE FOLLOWING:  
(a) THE SPECIFIC RATES CHARGED TO THE EMPLOYEE AND EMPLOYER.  
(b) THE DIRECT EXPENSE RATES CHARGED TO THE PLAN BY THIRD-PARTY  
INSURERS AND PLAN PROVIDERS.  
(c) THE TOTAL NUMBER OF EMPLOYEES, INCLUDING HOURS AND REVENUE  
COLLECTED IN THIS STATE AND NATIONALLY.  
(d) THE TOTAL DIRECT CLAIMS EXPENSES OR PAYMENTS TO BENEFICIARIES,  
IF ANY, IN THIS STATE AND NATIONALLY.  
(e) A LIST OF TOTAL PAYMENTS MADE TO ANY THIRD-PARTY INSURERS OR  
PLAN PROVIDERS IN THIS STATE AND NATIONALLY.  
(f) A LIST OF ALL ADMINISTRATIVE AND OTHER EXPENSES NOT LISTED IN  
SUBDIVISIONS (a) THROUGH (e) OF THIS PARAGRAPH INCURRED IN THIS STATE AND  
nATIONALLY.  
(g) A LIST THAT SUMMARIZES THE DIFFERENCE BETWEEN THE REVENUES AND  
EXPENSES IN SUBDIVISIONS (a) THROUGH (f) OF THIS PARAGRAPH IN THIS STATE  
AND NATIONALLY LISTED IN TOTAL DOLLARS AND AS A PERCENTAGE OF REVENUE.  
2. ALLOWS AN EMPLOYEE TO OPT OUT OF ANY HEALTH, PENSION OR VACATION  
OR SICK LEAVE BENEFITS AND TO CHOOSE EITHER:  
(a) BENEFITS FROM THE EMPLOYEE'S EMPLOYER IF THE EMPLOYER AGREES  
AND THE EMPLOYER WITHHOLDS PAYMENT TO THE THIRD-PARTY BENEFITS  
ORGANIZATION FOR THAT PARTICULAR BENEFIT CATEGORY.  
(b) BENEFITS OUTSIDE THE EMPLOYMENT RELATIONSHIP IF THE EMPLOYER  
WITHHOLDS PAYMENT FROM THE THIRD-PARTY BENEFITS ORGANIZATION FOR THAT  
PARTICULAR BENEFIT CATEGORY AND FORWARDS THE MONIES TO THE EMPLOYEE.  
3. ELIMINATES ANY PENALTY FOR AN EMPLOYEE OR EMPLOYER TO TERMINATE  
THE RELATIONSHIP WITH THE THIRD-PARTY BENEFITS ORGANIZATION, INCLUDING  
LIABILITY FOR ANY BENEFITS THAT ARE ACTUARILY UNDERFUNDED.  
D. A CLAIM FOR CALCULATED DAMAGES MAY BE BROUGHT AGAINST A  
THIRD-PARTY BENEFITS ORGANIZATION IN SUPERIOR COURT OR ANY OTHER  
APPROPRIATE VENUE. EXCEPT AS OTHERWISE SET FORTH IN THIS SECTION, THE  
COURT SHALL AWARD A PLAINTIFF ANY CALCULATED DAMAGES THAT THE PLAINTIFF  
HAS SUFFERED ALONG WITH ANY OTHER RELIEF TO WHICH THE PLAINTIFF MAY BE  
ENTITLED. THIS SECTION PROVIDES THE EXCLUSIVE REMEDY FOR A VIOLATION OF  
THIS SECTION. THIS SECTION DOES NOT CREATE A CAUSE OF ACTION BETWEEN AN  
EMPLOYEE AND EMPLOYER.  
E. THIS SECTION APPLIES TO ANY THIRD-PARTY BENEFITS ORGANIZATION  
THAT ESTABLISHES OR NEGOTIATES THE RATES OR COLLECTS MONIES FOR EMPLOYEE  
BENEFITS ON BEHALF OF A RESIDENT OF THIS STATE OR AN EMPLOYER THAT HAS  
EMPLOYEES LOCATED IN THIS STATE.  
F. ACTIONS FOR CALCULATED DAMAGES MUST BE BROUGHT WITHIN FOUR YEARS  
after the cause of action accrues.
G. THIS SECTION DOES NOT APPLY TO ANY OF THE FOLLOWING:
1. AN INSURER, INSURANCE AGENT OR INVESTMENT MANAGEMENT FIRM.
2. A THIRD-PARTY ADMINISTRATOR PERFORMING A PURELY ADMINISTRATIVE ROLE.
3. AN EMPLOYEE WHO IS EMPLOYED BY THE FEDERAL GOVERNMENT OR A POLITICAL SUBDIVISION OF THIS STATE.

H. FOR THE PURPOSES OF THIS SECTION:
1. "BENEFITS":
   (a) MEANS MONIES PAID BY AN EMPLOYEE OR EMPLOYER TO A THIRD-PARTY BENEFITS ORGANIZATION FOR THE BENEFIT OF THE EMPLOYEE AND INCLUDES HEALTH, PENSION, TRAINING OR VACATION OR SICK LEAVE BENEFITS OR OTHER BENEFITS.
   (b) DOES NOT INCLUDE LABOR ORGANIZATION MEMBERSHIP DUES.
2. "THIRD-PARTY BENEFITS ORGANIZATION" INCLUDES ANY LABOR ORGANIZATION AS DEFINED IN SECTIONS 23-1301 AND 23-1321 AND ANY TAFT HARTLEY TRUST, OTHER FUND OR ENTITY USED TO ADMINISTER ANY BENEFIT REQUIRED BY A LABOR AGREEMENT ADOPTED BY A THIRD-PARTY BENEFITS ORGANIZATION.

Sec. 3. Severability

If a provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

APPROVED BY THE GOVERNOR MAY 27, 2022.