CHAPTER 368

HOUSE BILL 2120

AN ACT

AMENDING SECTIONS 23-414, 23-418, 23-908 AND 23-963.01, ARIZONA REVISED STATUTES; RELATING TO WORKERS' COMPENSATION AND THE DIVISION OF OCCUPATIONAL SAFETY AND HEALTH.

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

Section 1. Section 23-414, Arizona Revised Statutes, is amended to read:

23-414. Emergency temporary standards
A. The commission may provide for emergency temporary standards or regulations to take immediate effect upon filing with the secretary of state, if the commission or the United States Occupational Safety and Health Administration determines that employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards and that such emergency standard or regulation is necessary to protect employees from such danger.

B. Such emergency temporary standards or regulations shall be effective until superseded by standards or regulations promulgated in accordance with the procedures prescribed in section 23-410.

C. Upon filing such a standard or regulation with the secretary of state the commission shall commence a proceeding in accordance with section 23-410 and the emergency temporary standard or regulation shall serve as a proposed standard or regulation for the proceeding. The commission shall promulgate a standard or regulation under this subsection no later than six months after filing of the emergency temporary standard or regulation.

Sec. 2. Section 23-418, Arizona Revised Statutes, is amended to read:

23-418. Penalties; violation; classification
A. Any employer who wilfully or repeatedly violates the requirements of section 23-403 or any standard or regulation adopted pursuant to section 23-410 or 23-414 or any provision of this article may be assessed a civil penalty of not more than seventy thousand dollars for each violation, but not less than five thousand dollars for each wilful violation of not more than the maximum civil penalty, but not less than the minimum civil penalty, for wilful or repeated violations adopted by the United States Occupational Safety and Health Administration pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (P.L. 114-74; 129 STAT. 599).

B. Any employer who has received a citation for a serious violation of any provision of this article shall be assessed a civil penalty of up to seven thousand dollars for each such violation of not more than the maximum civil penalty for serious violations adopted by the United States Occupational Safety and Health Administration pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (P.L. 114-74; 129 STAT. 599).

C. Any employer who has received a citation for a non-serious violation of any provision of this article may be assessed a civil penalty of up to seven thousand dollars for each such violation of not more than the maximum civil penalty for nonserious violations adopted
BY THE UNITED STATES OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

D. Any employer who fails to correct a violation for which a citation has been issued within the abatement period permitted for its correction, which period shall be suspended in case of a review proceeding before an administrative law judge or the review board initiated by the employer in good faith and not solely for delay or avoidance of penalties, may be assessed a civil penalty of not more than $7,000, the maximum civil penalty for abatement violations adopted by the United States Occupational Safety and Health Administration pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (P.L. 114-74; 129 STAT. 599) for each day during which such failure or violation continues after the abatement date.

E. Any employer knowingly violates the requirements of section 23-403 or any standard or regulation adopted pursuant to section 23-410 or 23-414 or any provision of this article and that violation causes death to an employee is guilty of a class 6 felony, except that if the conviction is for a second or subsequent violation the employer is guilty of a class 5 felony.

F. Any person who knowingly gives advance notice of any inspection to be conducted under this article without authority from the director is guilty of a class 2 misdemeanor.

G. Whoever knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this article is guilty of a class 2 misdemeanor.

H. Any employer who violates any of the posting requirements of this article shall be assessed a civil penalty of up to $7,000 for each violation of not more than the maximum civil penalty for posting violations adopted by the United States Occupational Safety and Health Administration pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (P.L. 114-74; 129 STAT. 599).

I. The commission shall have authority to assess all civil penalties provided in this section, giving due consideration to the appropriateness of the penalty with respect to the gravity of the violation, the number of employees employed by the employer, the good faith of the employer and the history of previous violations under this article.

J. Civil penalties owed under this article shall be paid to the commission for deposit in the state general fund. After an order or decision on a civil penalty becomes final pursuant to section 23-417, 23-421 or 23-423, the civil penalty shall act as a judgment against the employer. The commission shall file the civil penalty in the office of the clerk of the superior court in any county in this state and the clerk
shall enter the civil penalty in the civil order book and judgment docket. When the civil penalty is filed and entered it is a lien for eight years from AFTER the date of the final order or decision on the property of the employer located in the county. Execution may issue on the civil penalty within eight years in the same manner and with like effect as a judgment of the superior court. The civil penalty judgment shall accrue interest pursuant to section 44-1201. The commission may recover reasonable attorney fees incurred pursuant to this section.

Sec. 3. Section 23-908, Arizona Revised Statutes, is amended to read:

23-908. Injury reports by employer and physician; schedule of fees; notification; public meeting; violation; classification

A. Every employer that is affected by this chapter, and every physician who attends an injured employee of that employer, shall file with the commission and the employer's insurance carrier from time to time a full and complete report of every known injury to the employee arising out of or in the course of employment and resulting in loss of life or injury REQUIRING MEDICAL TREATMENT. The report shall be furnished to the commission and the insurance carrier at times and in the form and detail the commission prescribes, and the report shall make special answers to all questions required by the commission under its rules. FOR THE PURPOSES OF THIS SUBSECTION, MEDICAL TREATMENT DOES NOT INCLUDE ANY ONETIME, SHORT-TERM TREATMENT BY NONMEDICAL STAFF THAT REQUIRES LITTLE TECHNOLOGY OR TRAINING TO ADMINISTER, INCLUDING TREATMENT OF MINOR SCRATCHES, CUTS, BURNS AND SPLINTERS AND OTHER ISSUES THAT ORDINARILY DO NOT REQUIRE MEDICAL CARE.

B. The commission shall fix a schedule of fees to be charged by physicians, physical therapists or occupational therapists attending injured employees and, subject to subsection C of this section, for prescription medicines required to treat an injured employee under this chapter. Notwithstanding subsection C of this section, the schedule of fees may include other reimbursement guidelines for medications dispensed in settings that are not accessible to the general public. The commission shall annually review the schedule of fees. For the purposes of this subsection, settings that are not accessible to the general public do not include mail order pharmacies delivering pharmaceutical services to workers' compensation claimants, if both of the following apply:

1. The pharmacy does not limit or restrict access to claimants with an affiliation to a medical provider or other entity.
2. Any medical provider or other entity referring a claimant to the pharmacy does not receive or accept any rebate, refund, commission, preference or other consideration as compensation for the referral.
C. If a schedule of fees for prescription medicines adopted pursuant to subsection B of this section includes provisions regarding the use of generic equivalent drugs or interchangeable biological products, those provisions shall comply with section 32-1963.01, subsections A, B and D through L. If the commission considers the adoption of fee schedule provisions that involve specific prices, values or reimbursements for prescription drugs, the commission shall base the adoption on studies or practices that are validated and accepted in the industry, including the applicability of formulas that use average wholesale price, plus a dispensing fee, and that have been made publicly available for at least one hundred eighty days before any hearing conducted by the commission. Before the commission takes final action on the schedule of fees pursuant to this subsection and subsection B of this section, except during a public health emergency, the commission shall:

1. Prominently post on its publicly accessible website the proposed schedule of fees at least thirty days before conducting a public hearing on that proposed schedule of fees.

2. Hold at least one meeting that all interested parties may jointly attend and interactively participate in after posting the proposed schedule of fees but before conducting the hearing on the proposed schedule of fees.

3. At least seven business days in advance, prominently post on its publicly accessible website the final proposed schedule of fees to be acted on for adoption.

D. Notwithstanding section 12-2235, information obtained by any physician or surgeon examining or treating an injured person shall not be considered a privileged communication if that information is requested by interested parties for a proper understanding of the case and a determination of the rights involved. Hospital records of an employee concerning an industrial claim shall not be considered privileged if requested by an interested party in order to determine the rights involved. Medical information from any source pertaining to conditions unrelated to the pending industrial claim shall remain privileged.

E. When an accident occurs to an employee, the employee shall forthwith report the accident and the injury resulting from the accident to the employer, and any physician employed by the injured employee shall forthwith report the accident and the injury resulting from the accident to the employer, the insurance carrier and the commission.

F. If an accident occurs to an employee, the employer may designate in writing a physician chosen by the employer, who shall be allowed by the employee, or any person in charge of the employee, to make one examination of the injured employee in order to ascertain the character and extent of the injury occasioned by the accident. The physician so chosen shall forthwith report to the employer, the insurance carrier and the commission the character and extent of the injury as the physician ascertains. If
the accident is not reported by the employee or the employee's physician forthwith, as required, or if the injured employee or those in charge of the employee refuse to allow the employer's physician to make the examination, and the injured employee is a party to the refusal, no compensation shall be paid for the injury claimed to have resulted from the accident. The commission may relieve the injured person or that person's dependents from the loss or forfeiture of compensation if it believes after investigation that the circumstances attending the failure on the part of the employee or physician to report the accident and injury are such as to have excused them.

G. Within ten days after receiving notice of an accident, the employer shall inform the insurance carrier and the commission on the forms and in the manner as prescribed by the commission.

H. Immediately on notice to the employer of an accident resulting in an injury to an employee, the employer shall provide the employee with the name and address of the employer's insurance carrier, the policy number and the expiration date.

I. Any person failing or refusing to comply with this section is guilty of a petty offense.

J. Subsection B of this section does not prohibit:
   1. A health care provider or pharmacy from entering into a separate contract or network that governs fees, in which case reimbursement shall be made according to the applicable contracted charge or negotiated rate.
   2. An employer from directing medical, surgical or hospital care pursuant to section 23-1070.

Sec. 4. Section 23-963.01, Arizona Revised Statutes, is amended to read:

23-963.01. Policies with deductible coverage; medical-only loss

A. Notwithstanding the provisions of section 23-963, an insurance carrier authorized to transact workers' compensation insurance in this state may offer deductible coverage to employers. Deductible coverage shall be effected by attaching a benefits deductible endorsement to the policy. The endorsement shall specify whether loss adjustment expenses are to be treated as advancements within the deductible to be reimbursed by the employer. The policyholder exercising the deductible option shall choose only one deductible amount. Premium reductions for deductibles shall be determined before applying any experience modification, premium surcharge or premium discount. If an insurance carrier offers deductible coverage to an employer, the employer shall submit a certified copy of the employer's most recent financial statement to the insurance carrier to justify the deductible amount the employer chooses. The insurance carrier shall retain a copy of the financial statement for three years.
B. Any compensable claim for benefits shall be paid by the carrier. The employer shall reimburse the carrier for any deductible amounts paid by the carrier. The employer is liable for reimbursement up to the limit of the chosen deductible. The payment or nonpayment of deductible amounts by the insured employer to the carrier shall be treated under the policy in the same manner as payment or nonpayment of premiums.

C. The nonpayment of deductible amounts by the insured employer to the carrier under subsection B of this section shall not relieve the insurance carrier from payment of compensation for injuries or death sustained by an employee during the period of time the agreement, contract or policy was in effect. No agreements, contracts or policies providing deductible amounts for workers' compensation coverage shall be terminated retroactively for nonpayment of deductible amounts.

D. Losses subject to the deductible shall be reported and recorded as losses for purposes of calculating rates for a policyholder on the same basis as losses under policies providing first dollar coverage.

E. NOTWITHSTANDING ANY OTHER LAW, FOR ANY CLAIM INVOLVING MEDICAL-ONLY LOSS, ANY EXPERIENCE RATING ADJUSTMENT AS DETERMINED BY A NATIONAL NONPROFIT INSURANCE RATING ORGANIZATION SHALL BE APPLIED TO REDUCE THE IMPACT OF THE LOSS IN THE EMPLOYER'S EXPERIENCE MODIFICATION CALCULATION. FOR THE PURPOSES OF THIS SUBSECTION, "MEDICAL-ONLY LOSS" MEANS LOSS THAT HAS NO INDEMNITY VALUE REFLECTING LOST WAGES.

APPROVED BY THE GOVERNOR JULY 6, 2022.