

REFERENCE TITLE: medical product; procedure; mandates; liability

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

SB 1254

Introduced by
Senators Rogers: Borrelli, Gowan, Townsend

AN ACT

AMENDING TITLE 12, CHAPTER 6, ARTICLE 12, ARIZONA REVISED STATUTES, BY
ADDING SECTION 12-723; RELATING TO CIVIL LIABILITY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Title 12, chapter 6, article 12, Arizona Revised Statutes, is amended by adding section 12-723, to read:

12-723. Employer liability; mandated or coerced medical product or medical procedure; statutory damage award; workers' compensation setoff; definitions

A. NOTWITHSTANDING ANY OTHER LAW, AN EMPLOYER THAT MANDATES OR COERCES ITS EMPLOYEES TO RECEIVE A MEDICAL PRODUCT OR MEDICAL PROCEDURE IS LIABLE AS FOLLOWS:

1. TO AN EMPLOYEE FOR ANY INJURY AND ALL DAMAGES THAT ARE CAUSED BY THE MEDICAL PRODUCT OR MEDICAL PROCEDURE, INCLUDING ANY DISABILITY, PHYSICAL OR EMOTIONAL INJURY, LOSS OF WAGES, PAIN AND SUFFERING, MEDICAL EXPENSE, CONSEQUENTIAL DAMAGES OR OTHER DAMAGES THAT ARISE OUT OF, FLOW FROM OR ARE CAUSED BY AN ADVERSE REACTION, INJURY OR TEMPORARY OR PERMANENT DISABILITY.

2. TO AN EMPLOYEE'S DEPENDENT FOR THE DEATH OF THE EMPLOYEE IF THE EMPLOYEE'S DEATH RESULTED FROM THE MANDATED OR COERCED MEDICAL PRODUCT OR MEDICAL PROCEDURE.

B. IF THE INJURY ARISES WITHIN ONE HUNDRED TWENTY DAYS AFTER RECEIVING THE MEDICAL PRODUCT OR MEDICAL PROCEDURE, IT IS PRESUMED THAT THE MEDICAL PRODUCT OR MEDICAL PROCEDURE CAUSED THE INJURY.

C. A PREVAILING EMPLOYEE IS ENTITLED TO ATTORNEY FEES AND A STATUTORY DAMAGE AWARD THAT IS EQUAL TO THREE TIMES THE ACTUAL DAMAGES.

D. NOTWITHSTANDING ANY OTHER LAW AND EXCEPT AS PROVIDED BY THIS SUBSECTION, THE RIGHT OF AN EMPLOYEE TO FILE A CIVIL ACTION OR RECEIVE DAMAGES PURSUANT TO THIS SECTION MAY NOT BE ABROGATED BY FILING A WORKERS' COMPENSATION CLAIM. AN EMPLOYEE IS NOT REQUIRED TO FILE A WORKERS' COMPENSATION CLAIM BUT MAY CHOOSE TO BRING A WORKERS' COMPENSATION CLAIM EITHER BEFORE, DURING OR AFTER FILING A CIVIL ACTION PURSUANT TO THIS SECTION. AN EMPLOYEE WHO FILES A CLAIM FOR WORKERS' COMPENSATION DOES NOT HAVE ANY LIMITATION ON THE CLAIMS ASSERTED OR DAMAGES OR AWARD THAT THE EMPLOYEE MAY OBTAIN PURSUANT TO THIS SECTION, EXCEPT THAT THE AMOUNT OBTAINED FROM A WORKERS' COMPENSATION CLAIM SHALL BE REDUCED FROM ANY AMOUNT AWARDED PURSUANT TO THIS SECTION.

E. FOR THE PURPOSES OF THIS SECTION:

1. "ARISE" MEANS SHOWING ANY INITIAL SIGNS OF ANY KIND THAT INDICATE SOME REACTION OR INJURY CAUSED BY THE MEDICAL PRODUCT OR MEDICAL PROCEDURE EVEN IF THE FULL EXTENT OF THE INJURY IS NOT KNOWN OR DOES NOT ARISE UNTIL ONE HUNDRED TWENTY DAYS AFTER RECEIVING THE MEDICAL PRODUCT OR MEDICAL PROCEDURE.

2. "COERCE" MEANS TO WITHHOLD A BENEFIT, RIGHT OR PRIVILEGE IF AN EMPLOYEE REFUSES A MEDICAL PRODUCT OR MEDICAL PROCEDURE, INCLUDING ANY BENEFIT, RIGHT OR PRIVILEGE THAT IS GIVEN TO ANY OTHER EMPLOYEE OR TO OTHERWISE ENGAGE IN CONDUCT THAT IS INTENDED TO PENALIZE THE EMPLOYEE IN ANY MANNER FOR REFUSING A MEDICAL PRODUCT OR MEDICAL PROCEDURE.

1 3. "EMPLOYEE" MEANS AN INDIVIDUAL WHO IS EMPLOYED BY AN EMPLOYER.

2 4. "EMPLOYER":

3 (a) MEANS A PERSON IN THIS STATE THAT, AT ANY TIME, EMPLOYS AN
4 INDIVIDUAL OR INDIVIDUALS WHO RESIDE IN THIS STATE TO PERFORM SERVICES OF
5 ANY NATURE.

6 (b) INCLUDES:

7 (i) ANY INDIVIDUAL WHO CONTROLS PAYING WAGES FOR SERVICES OR WHO IS
8 THE OFFICER, AGENT OR EMPLOYEE OF THE INDIVIDUAL THAT HAS CONTROL OF
9 PAYING WAGES.

10 (ii) AN INDEPENDENT CONTRACTOR.

11 5. "MEDICAL PROCEDURE" MEANS ANY PROCEDURE INVOLVING AN
12 INDIVIDUAL'S BODY THAT IS RELATED TO AN INDIVIDUAL'S HEALTH.

13 6. "MEDICAL PRODUCT" MEANS ANY UNITED STATES FOOD AND DRUG
14 ADMINISTRATION AUTHORIZED OR APPROVED DEVICE, BIOLOGIC OR DRUG, INCLUDING
15 ANY DEVICE, BIOLOGIC OR DRUG THAT IS RELATED TO AN INDIVIDUAL'S HEALTH.