

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

# 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)

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

2 Section 1. Repeal

3 Section 23-1421, Arizona Revised Statutes, is repealed.

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

6 23-1421. Third-party benefits organizations; damages;  
7 exemptions; exclusive remedy; statute of  
8 limitations; applicability; definitions

9 A. AN EMPLOYEE WHO HAS SUFFERED CALCULATED DAMAGES MAY RECOVER  
10 THREE TIMES THE CALCULATED DAMAGES FROM A THIRD-PARTY BENEFITS  
11 ORGANIZATION FOR THE COST OF BENEFITS PAID BY THE EMPLOYEE. AN EMPLOYER  
12 THAT HAS SUFFERED CALCULATED DAMAGES MAY RECOVER THREE TIMES THE  
13 CALCULATED DAMAGES FROM A THIRD-PARTY BENEFITS ORGANIZATION THAT PAID FOR  
14 THE COST OF EMPLOYEE BENEFITS. THE CALCULATED DAMAGES ARE AS FOLLOWS:

15 1. FOR HEALTH, PENSION OR VACATION OR SICK LEAVE BENEFITS, ANY  
16 MONIES PAID BY OR FOR THE EMPLOYEE DURING A TWELVE-MONTH PERIOD THAT IS  
17 MORE THAN ONE HUNDRED TWENTY PERCENT OF THE COST OF EQUIVALENT HEALTH,  
18 PENSION OR VACATION OR SICK LEAVE BENEFITS. TO SHOW EQUIVALENCY, THE  
19 PLAINTIFF MAY SUBMIT A MATHEMATICAL OR AN ACTUARIAL DATA ANALYSIS THAT  
20 DEMONSTRATES THAT THE EMPLOYEE WOULD HAVE RECEIVED AT LEAST NINETY-FIVE  
21 PERCENT OF THE SAME VALUE FROM A PRODUCT AVAILABLE THROUGH THE EMPLOYER OR  
22 ON THE GENERAL MARKET.

23 2. FOR TRAINING BENEFITS, ANY MONIES PAID BY THE EMPLOYER OR  
24 EMPLOYEE IN EXCESS OF ONE HUNDRED TWENTY PERCENT OF ANY REASONABLE  
25 TRAINING COSTS INCURRED DURING A TWELVE-MONTH PERIOD FOR THE SPECIFIC  
26 BENEFIT OF THE EMPLOYEE'S JOB SKILL.

27 3. FOR ANY OTHER BENEFIT, ANY MONIES PAID BY THE EMPLOYER OR  
28 EMPLOYEE IN EXCESS OF \$1,000 DURING A TWELVE-MONTH PERIOD WHERE NO DIRECT  
29 BENEFIT CAN BE ATTRIBUTED TO THE EMPLOYEE.

30 B. AN EMPLOYEE MAY RECOVER CALCULATED DAMAGES ATTRIBUTABLE TO  
31 MONIES PAID BY THE EMPLOYEE'S EMPLOYER FOR THAT EMPLOYEE IF:

32 1. THE EMPLOYEE SENDS A CERTIFIED LETTER TO THE EMPLOYER'S  
33 STATUTORY AGENT IN THIS STATE THAT ADVISES THE EMPLOYER THAT THE EMPLOYEE  
34 INTENDS TO PURSUE SUCH A CLAIM UNLESS THE EMPLOYER OBJECTS WITHIN NINETY  
35 DAYS.

36 2. THE EMPLOYER DOES NOT OBJECT. AN EMPLOYER'S FAILURE TO OBJECT  
37 IN WRITING WITHIN NINETY DAYS CONSTITUTES A WAIVER OF THE EMPLOYER'S RIGHT  
38 TO RECOVER PURSUANT TO THIS SECTION TO THE EXTENT OF THE EMPLOYEE'S  
39 RECOVERY.

40 C. A THIRD-PARTY BENEFITS ORGANIZATION IS NOT LIABLE PURSUANT TO  
41 THIS SECTION IF THE THIRD-PARTY BENEFITS ORGANIZATION SATISFIES ALL OF THE  
42 FOLLOWING:

43 1. PROVIDES A RECONCILIATION TO ITS MEMBER EMPLOYEES THROUGH UNITED  
44 STATES MAIL OR EMAIL THAT WOULD REASONABLY ALLOW AN EMPLOYEE TO DETERMINE

1 THE COSTS AND EXPENSES OF THE BENEFITS. THE RECONCILIATION MUST BE LISTED  
2 BY BENEFIT FOR A TWELVE-MONTH PERIOD AND PROVIDE THE FOLLOWING:

3 (a) THE SPECIFIC RATES CHARGED TO THE EMPLOYEE AND EMPLOYER.

4 (b) THE DIRECT EXPENSE RATES CHARGED TO THE PLAN BY THIRD-PARTY  
5 INSURERS AND PLAN PROVIDERS.

6 (c) THE TOTAL NUMBER OF EMPLOYEES, INCLUDING HOURS AND REVENUE  
7 COLLECTED IN THIS STATE AND NATIONALLY.

8 (d) THE TOTAL DIRECT CLAIMS EXPENSES OR PAYMENTS TO BENEFICIARIES,  
9 IF ANY, IN THIS STATE AND NATIONALLY.

10 (e) A LIST OF TOTAL PAYMENTS MADE TO ANY THIRD-PARTY INSURERS OR  
11 PLAN PROVIDERS IN THIS STATE AND NATIONALLY.

12 (f) A LIST OF ALL ADMINISTRATIVE AND OTHER EXPENSES NOT LISTED IN  
13 SUBDIVISIONS (a) THROUGH (e) OF THIS PARAGRAPH INCURRED IN THIS STATE AND  
14 NATIONALLY.

15 (g) A LIST THAT SUMMARIZES THE DIFFERENCE BETWEEN THE REVENUES AND  
16 EXPENSES IN SUBDIVISIONS (a) THROUGH (f) OF THIS PARAGRAPH IN THIS STATE  
17 AND NATIONALLY LISTED IN TOTAL DOLLARS AND AS A PERCENTAGE OF REVENUE.

18 2. ALLOWS AN EMPLOYEE TO OPT OUT OF ANY HEALTH, PENSION OR VACATION  
19 OR SICK LEAVE BENEFITS AND TO CHOOSE EITHER:

20 (a) BENEFITS FROM THE EMPLOYEE'S EMPLOYER IF THE EMPLOYER AGREES  
21 AND THE EMPLOYER WITHHOLDS PAYMENT TO THE THIRD-PARTY BENEFITS  
22 ORGANIZATION FOR THAT PARTICULAR BENEFIT CATEGORY.

23 (b) BENEFITS OUTSIDE THE EMPLOYMENT RELATIONSHIP IF THE EMPLOYER  
24 WITHHOLDS PAYMENT FROM THE THIRD-PARTY BENEFITS ORGANIZATION FOR THAT  
25 PARTICULAR BENEFIT CATEGORY AND FORWARDS THE MONIES TO THE EMPLOYEE.

26 3. ELIMINATES ANY PENALTY FOR AN EMPLOYEE OR EMPLOYER TO TERMINATE  
27 THE RELATIONSHIP WITH THE THIRD-PARTY BENEFITS ORGANIZATION, INCLUDING  
28 LIABILITY FOR ANY BENEFITS THAT ARE ACTUARILY UNDERFUNDED.

29 D. A CLAIM FOR CALCULATED DAMAGES MAY BE BROUGHT AGAINST A  
30 THIRD-PARTY BENEFITS ORGANIZATION IN SUPERIOR COURT OR ANY OTHER  
31 APPROPRIATE VENUE. EXCEPT AS OTHERWISE SET FORTH IN THIS SECTION, THE  
32 COURT SHALL AWARD A PLAINTIFF ANY CALCULATED DAMAGES THAT THE PLAINTIFF  
33 HAS SUFFERED ALONG WITH ANY OTHER RELIEF TO WHICH THE PLAINTIFF MAY BE  
34 ENTITLED. THIS SECTION PROVIDES THE EXCLUSIVE REMEDY FOR A VIOLATION OF  
35 THIS SECTION. THIS SECTION DOES NOT CREATE A CAUSE OF ACTION BETWEEN AN  
36 EMPLOYEE AND EMPLOYER.

37 E. THIS SECTION APPLIES TO ANY THIRD-PARTY BENEFITS ORGANIZATION  
38 THAT ESTABLISHES OR NEGOTIATES THE RATES OR COLLECTS MONIES FOR EMPLOYEE  
39 BENEFITS ON BEHALF OF A RESIDENT OF THIS STATE OR AN EMPLOYER THAT HAS  
40 EMPLOYEES LOCATED IN THIS STATE.

41 F. ACTIONS FOR CALCULATED DAMAGES MUST BE BROUGHT WITHIN FOUR YEARS  
42 AFTER THE CAUSE OF ACTION ACCRUES.

- 1 G. THIS SECTION DOES NOT APPLY TO ANY OF THE FOLLOWING:  
2 1. AN INSURER, INSURANCE AGENT OR INVESTMENT MANAGEMENT FIRM.  
3 2. A THIRD-PARTY ADMINISTRATOR PERFORMING A PURELY ADMINISTRATIVE  
4 ROLE.  
5 3. AN EMPLOYEE WHO IS EMPLOYED BY THE FEDERAL GOVERNMENT OR A  
6 POLITICAL SUBDIVISION OF THIS STATE.  
7 H. FOR THE PURPOSES OF THIS SECTION:  
8 1. "BENEFITS":  
9 (a) MEANS MONIES PAID BY AN EMPLOYEE OR EMPLOYER TO A THIRD-PARTY  
10 BENEFITS ORGANIZATION FOR THE BENEFIT OF THE EMPLOYEE AND INCLUDES HEALTH,  
11 PENSION, TRAINING OR VACATION OR SICK LEAVE BENEFITS OR OTHER BENEFITS.  
12 (b) DOES NOT INCLUDE LABOR ORGANIZATION MEMBERSHIP DUES.  
13 2. "THIRD-PARTY BENEFITS ORGANIZATION" INCLUDES ANY LABOR  
14 ORGANIZATION AS DEFINED IN SECTIONS 23-1301 AND 23-1321 AND ANY TAFT  
15 HARTLEY TRUST, OTHER FUND OR ENTITY USED TO ADMINISTER ANY BENEFIT  
16 REQUIRED BY A LABOR AGREEMENT ADOPTED BY A THIRD-PARTY BENEFITS  
17 ORGANIZATION.

18 Sec. 3. Severability

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