

Senate Engrossed House Bill

~~industrial commission of Arizona; continuation~~
(now: industrial commission of Arizona; continuations)

State of Arizona
House of Representatives
Fifty-sixth Legislature
Second Regular Session
2024

HOUSE BILL 2209

AN ACT

AMENDING SECTIONS 23-108.03 AND 23-408, ARIZONA REVISED STATUTES;
REPEALING SECTIONS 41-3024.17, 41-3024.18, 41-3024.19 AND 41-3024.20,
ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 27, ARTICLE 2,
ARIZONA REVISED STATUTES, BY ADDING SECTIONS 41-3028.15, 41-3032.17,
41-3032.18 AND 41-3032.19; RELATING TO LABOR.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 23-108.03, Arizona Revised Statutes, is amended
3 to read:
4 23-108.03. Performance of certain powers and duties
5 A. The industrial commission OF ARIZONA shall be responsible for
6 determining the policy of the commission.
7 B. Any powers and duties prescribed by law to the commission in
8 this chapter and chapters 2 and 6 of this title, whether ministerial or
9 discretionary, may by resolution be delegated by the commission to the
10 director or any of its department heads or assistants, provided, that the
11 commission shall not delegate its power or duty to:
12 1. Make rules and regulations.
13 2. Commute awards to a lump sum.
14 3. License self-insurers.
15 C. The commission shall be responsible for the official acts of its
16 employees acting in the name of the commission and by its delegated
17 authority.
18 D. LABOR DEPARTMENT DETERMINATIONS, PENALTIES AND FINES FOR LABOR
19 VIOLATIONS SHALL BE CONSIDERED, AUTHORIZED AND DETERMINED BY A VOTE OF THE
20 COMMISSIONERS. THE COMMISSIONERS SHALL CONSIDER WHETHER A VIOLATION
21 CONTINUES AFTER THE EMPLOYER'S COURSE OF CONDUCT HAS CEASED. FOR THE
22 PURPOSES OF THIS SUBSECTION, "LABOR DEPARTMENT" MEANS THE LABOR DEPARTMENT
23 OF THE INDUSTRIAL COMMISSION OF ARIZONA.
24 Sec. 2. Section 23-408, Arizona Revised Statutes, is amended to
25 read:
26 23-408. Inspection of places and practices of employment;
27 closing conference; prohibitions; employee
28 initiation of investigation; violation;
29 classification; injunction
30 A. Except as prescribed in section 23-432, subsection E, the
31 director of the division of occupational safety and health, or the
32 director's authorized representative, on presentation of credentials,
33 shall be permitted to inspect places of employment, question employees and
34 investigate conditions, practices or matters in connection with employment
35 subject to this article at reasonable times, as the director or the
36 director's authorized representative may deem appropriate to determine
37 whether any person has violated any provision of this article or any rule
38 or regulation issued pursuant to this article or that may aid in the
39 enforcement of this article. An employer or other person shall not refuse
40 to admit the director or the director's authorized representatives to any
41 place or refuse to permit the inspection if the proper credentials are
42 presented and the inspection is made at a reasonable time.
43 B. In making inspections and investigations, the director or the
44 director's authorized representative may require the attendance and
45 testimony of witnesses and the production of evidence under oath.

1 Witnesses shall be paid the same fees and mileage paid to witnesses in the
2 courts of this state. If any person fails or refuses to obey such an
3 order, the director or the director's authorized representative may apply
4 to any superior court in any county where the person is found, resides or
5 transacts business for an order requiring the person to produce evidence
6 and to give testimony as ordered. Failure to obey such an order is
7 contempt of court.

8 C. The director or the director's authorized representative shall
9 inspect at least every six months any operation that mixes rock, sand,
10 gravel or similar materials with water and cement or with asphalt and that
11 is not included in the definition of mine in section 27-301. The director
12 or the director's authorized representative shall monitor and work with
13 the mine inspector only to the extent necessary to ensure this state's
14 compliance with federal occupational safety and health act standards,
15 (P.L. 91-596).

16 D. Notice of an intended inspection shall not be given to an
17 employer before the time of actual entry on the workplace, except by
18 specific authorization by the director.

19 E. A representative of the employer and a representative authorized
20 by the employer's employees shall be given an opportunity to accompany the
21 director or the director's authorized representative during the physical
22 inspection of any workplace for the purpose of aiding the
23 inspection. Where there is no authorized employee representative, the
24 director or the director's authorized representative shall consult a
25 reasonable number of employees concerning matters of safety and health in
26 the workplace.

27 F. THE DIRECTOR MAY NOT ALLOW ANY INDIVIDUAL TO ACCOMPANY A
28 COMPLIANCE SAFETY AND HEALTH OFFICER WHEN CONDUCTING INSPECTIONS FOR THE
29 INDUSTRIAL COMMISSION OF ARIZONA PURSUANT TO THIS SECTION UNLESS THE
30 INDIVIDUAL IS ANY OF THE FOLLOWING:

31 1. AN EMPLOYEE OF THE EMPLOYER BEING INSPECTED.

32 2. A SAFETY CONSULTANT, ATTORNEY OR OTHER AGENT OF THE EMPLOYER OR
33 A PERSON PRESENT WITH THE CONSENT OF THE EMPLOYER.

34 3. THE AUTHORIZED EMPLOYEE REPRESENTATIVE. FOR THE PURPOSES OF
35 THIS PARAGRAPH, "AUTHORIZED EMPLOYEE REPRESENTATIVE" MEANS AN AGENT OF A
36 LABOR ORGANIZATION THAT HAS A COLLECTIVE BARGAINING RELATIONSHIP WITH THE
37 EMPLOYER WHO REPRESENTS EMPLOYEES WHO ARE MEMBERS OF THE COLLECTIVE
38 BARGAINING UNIT.

39 4. A THIRD PARTY WHO IS REQUIRED BY LAW TO ACCOMPANY THE COMPLIANCE
40 SAFETY AND HEALTH OFFICER TO ENSURE THAT THE STATE PLAN IS AT LEAST AS
41 EFFECTIVE AS THE STANDARDS OF THE OCCUPATIONAL SAFETY AND HEALTH ACT OF
42 1970 (P.L. 91-596; 84 STAT. 1590).

43 5. OTHERWISE REQUIRED BY LAW TO BE PRESENT.

1 G. THE EMPLOYER MAY REQUIRE THE FOLLOWING CONDITIONS FOR A THIRD
2 PARTY WHO ACCOMPANIES A COMPLIANCE SAFETY AND HEALTH OFFICER DURING AN
3 INSPECTION PURSUANT TO SUBSECTION F OF THIS SECTION:

4 1. THAT NOT MORE THAN ONE INDIVIDUAL BE PRESENT UNLESS OTHERWISE
5 REQUIRED BY LAW.

6 2. THAT THE INDIVIDUAL FOLLOW ALL WORKPLACE SAFETY RULES REGARDING
7 PERSONAL PROTECTIVE EQUIPMENT APPLICABLE TO ALL VISITORS FOR THE
8 WORKPLACE.

9 3. THAT THE INDIVIDUAL IS REQUIRED TO COMPLETE ANY SAFETY TRAININGS
10 APPLICABLE TO ALL VISITORS OF THE WORKPLACE.

11 4. THAT THE INDIVIDUAL SIGN A CONFIDENTIALITY AGREEMENT WITH
12 RESPECT TO THE USE OF CONFIDENTIAL INFORMATION THAT IS LEARNED DURING THE
13 INSPECTION THAT HAS THE SAME TERMS AS REQUIRED FOR OTHER VISITORS.

14 5. THAT NONEMPLOYEES, OTHER THAN THE COMPLIANCE SAFETY AND HEALTH
15 OFFICER, ARE PROHIBITED FROM ENTERING AREAS THAT CONTAIN TRADE SECRETS.
16 THE COMPLIANCE SAFETY AND HEALTH OFFICER MAY CONSULT WITH A REASONABLE
17 NUMBER OF EMPLOYEES WHO WORK IN THE IDENTIFIED TRADE SECRET AREA ON
18 MATTERS OF SAFETY AND HEALTH, EVEN IF THOSE EMPLOYEES ARE NOT JOINING THE
19 INSPECTION. INFORMATION OBTAINED BY THE COMMISSION OR ITS REPRESENTATIVES
20 DURING THE INSPECTION THAT CONTAINS OR THAT MAY REVEAL A TRADE SECRET IS
21 SUBJECT TO SECTION 23-426.

22 ~~F.~~ H. Except as provided in section 23-426, information and facts
23 developed by the commission, the director or any employee of the
24 commission or division in the course of any inspection or investigation
25 are public records subject to inspection pursuant to title 39, chapter 1,
26 article 2, if, pursuant to section 23-415, subsection D, the inspection or
27 investigation has been closed or a citation has been issued. Such
28 information and facts shall not be admissible in any court or before any
29 administrative body except pursuant to this article. Notwithstanding this
30 subsection, the director or any commission employee is not required to
31 appear at any deposition, trial or hearing concerning a division
32 inspection or investigation unless the appearance is related to a hearing
33 held pursuant to this article. Hearings held pursuant to this article are
34 open to the public.

35 ~~G.~~ I. During the inspection or investigation and in deciding
36 whether to recommend and issue a citation, the director or the director's
37 authorized representative and the commission may consider whether an
38 employee has committed misconduct by violating the employer's policies, if
39 any, regarding substance abuse while working, as evidenced by the results
40 of testing for substance abuse or other evidence of impairment while
41 working.

42 ~~H.~~ J. An employee of the division or the commission may not:

43 1. Before, during or after an inspection or investigation,
44 communicate to an employer that the employer should not be represented by
45 an attorney or that the employer may be treated more favorably by the

1 division or the commission if the employer is not represented by an
2 attorney.

3 2. Conduct an audio recording of an oral statement provided during
4 an interview without the knowledge and consent of the person being
5 interviewed. The employee of the division or the commission shall inform
6 the person being interviewed of the person's right to receive a copy of
7 the recorded oral statement within a reasonable time.

8 3. Obtain a written statement during an interview without informing
9 the person of the person's right to receive a copy of the written
10 statement within a reasonable time.

11 ~~I.~~ K. An employee or a representative of employees who believes
12 that a violation of a safety or health standard or regulation exists that
13 threatens physical harm or that an imminent danger exists may request an
14 investigation by giving notice to the director or the director's
15 authorized representative of the violation or danger. Any notice shall be
16 in writing, set forth with reasonable particularity the grounds for the
17 notice and be signed by the employees or representative of the employees.
18 On the request of the employee giving the notice, the employee's name and
19 the names of other employees referred to in the notice shall not appear on
20 any copy of the notice or any record published, released or made
21 available. If on receipt of the notice the director determines that there
22 are reasonable grounds to believe that the violation or danger exists, the
23 director shall make an investigation in accordance with this article as
24 soon as practicable to determine if the violation or danger exists. If
25 the director determines there are no reasonable grounds to believe that a
26 violation or danger exists, the director shall notify the employees or
27 representative of the employees in writing of the determination.

28 ~~J.~~ L. Any person who violates any provision of this section is
29 guilty of a class 2 misdemeanor.

30 ~~K.~~ M. The commission, or the commission's authorized
31 representative, in addition to initiating an action under subsection ~~I.~~ K
32 of this section, may file in the superior court in the county where the
33 inspection was refused a verified complaint against an employer who
34 violates subsection A of this section and request an injunction against
35 continued refusal to permit an inspection.

36 N. AT LEAST THIRTY DAYS BEFORE THE INDUSTRIAL COMMISSION OF ARIZONA
37 SUBMITS THE STATE PLAN PROPOSAL OR PROPOSED ADOPTION TO THE UNITED STATES
38 OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, THE COMMISSION SHALL SUBMIT
39 THE STATE PLAN PROPOSAL OR PROPOSED ADOPTION TO THE JOINT LEGISLATIVE
40 AUDIT COMMITTEE, WHICH MAY REVIEW AND RECOMMEND THAT THE COMMISSION AMEND
41 THE STATE PLAN PROPOSAL OR PROPOSED ADOPTION.

42 Sec. 3. Repeal

43 Sections 41-3024.17, 41-3024.18, 41-3024.19 and 41-3024.20, Arizona
44 Revised Statutes, are repealed.

1 Sec. 9. Legislative intent

2 It is the intent of the legislature to request the joint legislative
3 audit committee to assign the sunset review of the industrial commission
4 of Arizona to the office of the auditor general to conduct a performance
5 audit.

6 Sec. 10. Retroactivity

7 Sections 3 and 4 of this act apply retroactively to from and after
8 July 1, 2024.