

PROPOSED
HOUSE OF REPRESENTATIVES AMENDMENTS TO S.B. 1254
(Reference to Senate engrossed bill)

1 Strike everything after the enacting clause and insert:

2 "Section 1. Section 23-107, Arizona Revised Statutes, is amended to
3 read:

4 23-107. General powers

5 A. The commission has full power, jurisdiction and authority to:

6 1. Formulate and adopt rules and regulations for effecting the
7 purposes of this article.

8 2. Administer and enforce all laws for the protection of life,
9 health, safety and welfare of employees in every case and under every law
10 when such duty is not specifically delegated to any other board or
11 officer, and, when such duty is specifically delegated, to counsel, advise
12 and assist in the administration and enforcement of such laws and for such
13 purposes may conduct investigations.

14 3. Promote the voluntary arbitration, mediation and conciliation of
15 disputes between employers and employees.

16 ~~4. License and supervise the work of private employment offices,
17 bring together employers seeking employees and working people seeking
18 employment, and make known the opportunities for employment in the state.~~

19 ~~5.~~ 4. Collect, collate and publish all statistical and other
20 information relating to employees, employers, employments and places of
21 employment with other appropriate statistics.

22 ~~6.~~ 5. Act as the regulatory agency ~~insuring~~ ENSURING that workers'
23 compensation carriers are processing claims in accordance with chapter 6
24 of this title.

25 ~~7.~~ 6. Provide nonpublic, confidential or privileged documents,
26 materials or other information to another state, local or federal
27 regulatory agency for the purpose of the legitimate administrative needs
28 of the programs administered by that agency if the recipient agency agrees
29 and warrants that it has the authority to maintain and will maintain the
30 confidentiality and privileged status of the documents, materials or other
31 information.

32 ~~8.~~ 7. Receive nonpublic documents, materials and other information
33 from another state, local or federal regulatory agency to properly
34 administer programs of the commission. The commission shall maintain as
35 confidential or privileged any document, material or other information
36 that is identified by the exchange agency as confidential or privileged
37 under the laws of the jurisdiction that is the source of the document,
38 material or other information.

1 ~~9-~~ 8. Enter into agreements that govern the exchange of nonpublic
2 documents, materials and other information that are consistent with
3 paragraphs ~~7-~~ 6 and ~~8-~~ 7 OF THIS SUBSECTION. The commission may request
4 nondisclosure of information that is identified as privileged or
5 confidential. Any disclosure pursuant to paragraph ~~7-~~ 6 or ~~8-~~ 7 OF THIS
6 SUBSECTION or this paragraph is not a waiver of any applicable privilege
7 or claim of confidentiality in the documents, materials or other
8 information.

9 B. ~~Upon~~ ON petition by any person that any employment or place of
10 employment is not safe or is injurious to the welfare of any employee, the
11 commission has power and authority, with or without notice, to make
12 investigations necessary to determine the matter complained of.

13 C. The members of the commission may confer and meet with officers
14 of other states and officers of the United States on matters pertaining to
15 their official duties.

16 D. Notwithstanding any other law, the commission may protect from
17 public inspection the financial information that is received from a
18 private entity that applies to self-insure or that renews its
19 self-insurance plan pursuant to section 23-961, subsection A if the
20 information is kept confidential by the private entity in its ordinary and
21 regular course of business.

22 Sec. 2. Section 23-110, Arizona Revised Statutes, is amended to
23 read:

24 23-110. Industrial commission of Arizona resource officer

25 A. The director of the industrial commission OF ARIZONA shall
26 employ ~~an ombudsman~~ A RESOURCE OFFICER to assist recipients of ~~workers'~~
27 ~~compensation~~ benefits UNDER THE INDUSTRIAL COMMISSION OF ARIZONA'S
28 PURVIEW.

29 B. The ~~ombudsman~~ RESOURCE OFFICER shall not provide legal advice
30 but may provide information about the workers' compensation system and
31 rules governing commission proceedings and may assist in clarifying the
32 methods used to determine a person's workers' compensation benefits.

33 C. THE RESOURCE OFFICER MAY ALSO PROVIDE INFORMATION ABOUT THE
34 LABOR PROGRAMS UNDER THE INDUSTRIAL COMMISSION OF ARIZONA'S PURVIEW AND
35 RULES GOVERNING THE COMMISSION PROCEEDINGS FOR THESE MATTERS.

36 Sec. 3. Section 23-401, Arizona Revised Statutes, is amended to
37 read:

38 23-401. Definitions

39 In this article, unless the context otherwise requires:

40 1. "Board" means a review board established pursuant to section
41 23-422.

42 2. "CHIEF" MEANS THE CHIEF OF THE DIVISION.

43 ~~2-~~ 3. "Commission" means the industrial commission of Arizona.

44 ~~3-~~ 4. "De minimis violation" means a condition or practice that,
45 although undesirable, has no direct or immediate relationship to safety or
46 health.

47 ~~4-~~ "Director" means the director of the division.

48 5. "Division" means the division of occupational safety and health
49 within the commission.

- 1 6. "Employee" means any person performing services for an employer,
2 including any person defined as an employee pursuant to section 23-901,
3 except employees engaged in household domestic labor.
- 4 7. "Employer":
- 5 (a) Means any individual or type of organization, including this
6 state and all political subdivisions of this state, that has in its employ
7 one or more individuals performing services for it in employment. ~~and~~
- 8 (b) Includes self-employed persons. ~~, but~~
- 9 (c) Does not include employers of household domestic labor.
- 10 8. "Interested party" means the commission and the commission's
11 agents, the employer and the affected employees of such employer.
- 12 9. "Model system" means an exemplary and ~~voluntary~~ VOLUNTARILY
13 implemented worker safety and health management system that BOTH:
- 14 (a) Exceeds basic compliance with occupational safety and health
15 laws and regulations.
- 16 (b) Meets the requirements adopted by the division pursuant to
17 section 23-432.
- 18 10. ~~Non-serious~~ NONSERIOUS violation" means a condition or
19 practice in a place of employment that does not constitute a serious
20 violation but that violates a standard or regulation and has a direct or
21 immediate relationship to safety or health, unless the employer did not,
22 and could not with the exercise of reasonable diligence, know of the
23 presence of such condition or practice.
- 24 11. "Program" means the voluntary protection program or any other
25 program under which the ~~director~~ CHIEF recognizes and partners with
26 workplaces that have implemented a model system.
- 27 12. "Recognized hazard" means an unsafe or unhealthful condition or
28 practice recognized as such with respect to the standard of knowledge in
29 the industry.
- 30 13. "Regulation" means any written regulation of occupational
31 safety and health governing places of employment formulated pursuant to
32 section 23-410, exclusive of standards, and ~~shall have~~ HAS the same
33 meaning as and ~~include~~ INCLUDES the term "rule".
- 34 14. "Serious violation" means a condition or practice in a place of
35 employment that violates a standard, A regulation or section 23-403,
36 subsection A and produces a substantial probability that death or serious
37 physical harm could result, unless the employer did not, and could not
38 with the exercise of reasonable diligence, know of the presence of such
39 condition or practice.
- 40 15. "Standard" means any occupational safety and health standard
41 that has been adopted and promulgated by a nationally recognized
42 standards-producing organization or the federal government and ~~shall have~~
43 HAS the same meaning as, ~~and~~ ~~include~~ INCLUDES the term "code".
- 44 16. "Trade secret" means a plan or process, tool, mechanism, or
45 compound not patented, known only to its owner and those of the owner's
46 employees to whom it is necessary to confide it, or other information that
47 the employer treats as confidential and has a reasonable basis for doing
48 so.

1 less than three years' experience in an administrative capacity in the
2 field of occupational safety and health.

3 D. The salary of the ~~director~~ CHIEF shall be determined pursuant to
4 section 38-611.

5 Sec. 6. Section 23-408, Arizona Revised Statutes, is amended to
6 read:

7 23-408. Inspection of places and practices of employment;
8 closing conference; prohibitions; employee
9 initiation of investigation; violation;
10 classification; injunction

11 A. Except as prescribed in section 23-432, subsection E, the
12 ~~director~~ CHIEF of the division ~~of occupational safety and health~~, or the
13 ~~director's~~ CHIEF'S authorized representative, on presentation of
14 credentials, shall be ~~permitted~~ ALLOWED to inspect places of employment,
15 question employees and investigate conditions, practices or matters in
16 connection with employment subject to this article at reasonable times, as
17 the ~~director~~ CHIEF or the ~~director's~~ CHIEF'S authorized representative may
18 deem appropriate to determine whether any person has violated ~~any~~
19 ~~provision of~~ this article or any rule or regulation issued pursuant to
20 this article or that may aid in the enforcement of this article. An
21 employer or other person shall not refuse to admit the ~~director~~ CHIEF or
22 the ~~director's~~ CHIEF'S authorized representatives to any place or refuse
23 to ~~permit~~ ALLOW the inspection if the proper credentials are presented and
24 the inspection is made at a reasonable time.

25 B. In making inspections and investigations, the ~~director~~ CHIEF or
26 the ~~director's~~ CHIEF'S authorized representative may require the
27 attendance and testimony of witnesses and the production of evidence under
28 oath. Witnesses shall be paid the same fees and mileage paid to witnesses
29 in the courts of this state. If any person fails or refuses to obey such
30 an order, the ~~director~~ CHIEF or the ~~director's~~ CHIEF'S authorized
31 representative may apply to any superior court in any county where the
32 person is found, resides or transacts business for an order requiring the
33 person to produce evidence and to give testimony as ordered. Failure to
34 obey such an order is contempt of court.

35 C. The ~~director~~ CHIEF or the ~~director's~~ CHIEF'S authorized
36 representative shall inspect at least every six months any operation that
37 mixes rock, sand, gravel or similar materials with water and cement or
38 with asphalt and that is not included in the definition of mine in section
39 27-301. The ~~director~~ CHIEF or the ~~director's~~ CHIEF'S authorized
40 representative shall monitor and work with the mine inspector only to the
41 extent necessary to ensure this state's compliance with federal
42 occupational safety and health act standards, ~~—~~ (P.L. 91-596).

43 D. Notice of an intended inspection shall not be given to an
44 employer before the time of actual entry on the workplace, except by
45 specific authorization by the ~~director~~ CHIEF.

46 E. A representative of the employer and a representative authorized
47 by the employer's employees shall be given an opportunity to accompany the
48 ~~director~~ CHIEF or the ~~director's~~ CHIEF'S authorized representative during
49 the physical inspection of any workplace for the purpose of aiding the

1 inspection. ~~Where~~ IF there is no authorized employee representative, the
2 ~~director~~ CHIEF or the ~~director's~~ CHIEF'S authorized representative shall
3 consult a reasonable number of employees concerning matters of safety and
4 health in the workplace.

5 F. The ~~director~~ CHIEF may not allow any individual to accompany a
6 compliance safety and health officer when conducting inspections for the
7 ~~industrial~~ commission ~~of Arizona~~ pursuant to this section unless the
8 individual is any of the following:

9 1. An employee of the employer being inspected.

10 2. A safety consultant, attorney or other agent of the employer or
11 a person present with the consent of the employer.

12 3. The authorized employee representative. For the purposes of
13 this paragraph, "authorized employee representative" means an agent of a
14 labor organization that has a collective bargaining relationship with the
15 employer who represents employees who are members of the collective
16 bargaining unit.

17 4. A third party who is required by law to accompany the compliance
18 safety and health officer to ensure that the state plan is at least as
19 effective as the standards of the occupational safety and health act of
20 1970 (P.L. 91-596; 84 Stat. 1590).

21 5. Otherwise required by law to be present.

22 G. The employer may require the following conditions for a third
23 party who accompanies a compliance safety and health officer during an
24 inspection pursuant to subsection F of this section:

25 1. That not more than one individual be present unless otherwise
26 required by law.

27 2. That the individual follow all workplace safety rules regarding
28 personal protective equipment applicable to all visitors for the
29 workplace.

30 3. That the individual ~~is required to~~ complete any safety trainings
31 applicable to all visitors of the workplace.

32 4. That the individual sign a confidentiality agreement with
33 respect to the use of confidential information that is learned during the
34 inspection that has the same terms as required for other visitors.

35 5. That nonemployees, other than the compliance safety and health
36 officer, ~~are~~ BE prohibited from entering areas that contain trade secrets.
37 The compliance safety and health officer may consult with a reasonable
38 number of employees who work in the identified trade secret area on
39 matters of safety and health, even if those employees are not joining the
40 inspection. Information obtained by the commission or its representatives
41 during the inspection that contains or that may reveal a trade secret is
42 subject to section 23-426.

43 H. Except as provided in section 23-426, information and facts
44 developed by the commission, the ~~director~~ CHIEF or any employee of the
45 commission or division in the course of any inspection or investigation
46 are public records subject to inspection pursuant to title 39, chapter 1,
47 article 2, if, pursuant to section 23-415, subsection D, the inspection or
48 investigation has been closed or a citation has been issued. Such
49 information and facts shall not be admissible in any court or before any

1 administrative body except pursuant to this article. Notwithstanding this
2 subsection, the ~~director~~ CHIEF or any commission employee is not required
3 to appear at any deposition, trial or hearing concerning a division
4 inspection or investigation unless the appearance is related to a hearing
5 held pursuant to this article. Hearings held pursuant to this article are
6 open to the public.

7 I. During the inspection or investigation and in deciding whether
8 to recommend and issue a citation, the ~~director~~ CHIEF or the ~~director's~~
9 CHIEF'S authorized representative and the commission may consider whether
10 an employee has committed misconduct by violating the employer's policies,
11 if any, regarding substance abuse while working, as evidenced by the
12 results of testing for substance abuse or other evidence of impairment
13 while working.

14 J. An employee of the division or the commission may not:

15 1. Before, during or after an inspection or investigation,
16 communicate to an employer that the employer should not be represented by
17 an attorney or that the employer may be treated more favorably by the
18 division or the commission if the employer is not represented by an
19 attorney.

20 2. Conduct an audio recording of an oral statement provided during
21 an interview without the knowledge and consent of the person being
22 interviewed. The employee of the division or the commission shall inform
23 the person being interviewed of the person's right to receive a copy of
24 the recorded oral statement within a reasonable time.

25 3. Obtain a written statement during an interview without informing
26 the person of the person's right to receive a copy of the written
27 statement within a reasonable time.

28 K. An employee or a representative of employees who believes that a
29 violation of a safety or health standard or regulation exists that
30 threatens physical harm or that an imminent danger exists may request an
31 investigation by giving notice to the ~~director~~ CHIEF or the ~~director's~~
32 CHIEF'S authorized representative of the violation or danger. Any notice
33 shall be in writing, set forth with reasonable particularity the grounds
34 for the notice and be signed by the employees or representative of the
35 employees. On the request of the employee giving the notice, the
36 employee's name and the names of other employees referred to in the notice
37 shall not appear on any copy of the notice or any record published,
38 released or made available. If on receipt of the notice the ~~director~~
39 CHIEF determines that there are reasonable grounds to believe that the
40 violation or danger exists, the ~~director~~ CHIEF shall make an investigation
41 in accordance with this article as soon as practicable to determine if the
42 violation or danger exists. If the ~~director~~ CHIEF determines there are no
43 reasonable grounds to believe that a violation or danger exists, the
44 ~~director~~ CHIEF shall notify the employees or representative of the
45 employees in writing of the determination.

46 L. Any person who violates ~~any provision of~~ this section is guilty
47 of a class 2 misdemeanor.

48 M. The commission, or the commission's authorized representative,
49 in addition to initiating an action under subsection K of this section,

1 may file in the superior court in the county where the inspection was
2 refused a verified complaint against an employer who violates subsection A
3 of this section and request an injunction against continued refusal to
4 ~~permit~~ ALLOW an inspection.

5 N. At least thirty days before the ~~industrial~~ commission ~~of Arizona~~
6 submits the state plan proposal or proposed adoption to the United States
7 occupational safety and health administration, the commission shall submit
8 the state plan proposal or proposed adoption to the joint legislative
9 audit committee, which may review and recommend that the commission amend
10 the state plan proposal or proposed adoption.

11 Sec. 7. Section 23-409, Arizona Revised Statutes, is amended to
12 read:

13 23-409. Advisory committees

14 A. The commission shall create an occupational safety and health
15 advisory committee to assist the commission in drafting standards and
16 regulations. The committee may be asked to perform other functions as may
17 be necessary. The committee shall be appointed by the commission and
18 shall be composed of a reasonably balanced representation of regulated
19 industries, including agriculture, and labor and other persons
20 knowledgeable in safety and health and shall serve at the will of the
21 commission. The commission may establish other committees as it deems
22 necessary. The advisory committees may be paid their reasonable and
23 necessary travel and other expenses in accordance with standard travel
24 regulations.

25 B. The ~~director~~ CHIEF shall be an ex officio member of any advisory
26 committee established pursuant to this section.

27 Sec. 8. Section 23-415, Arizona Revised Statutes, is amended to
28 read:

29 23-415. Citations

30 A. If the ~~director~~ CHIEF, following an inspection or investigation
31 determines that there is reasonable cause to believe that A violation
32 exists ~~he~~, THE CHIEF shall with reasonable promptness issue a citation to
33 the employer. Each citation shall be in writing and shall contain the
34 following:

35 1. A particular description of the nature of the violation,
36 including a reference to the provision of this article, or of any standard
37 or regulation alleged to have been violated.

38 2. A reasonable time for the abatement of the violation.

39 3. A notice that the employer may request a hearing pursuant to
40 section 23-420 if ~~he~~ THE EMPLOYER is aggrieved by the citation.

41 B. A certified mail delivery receipt or a signed verification of
42 delivery in person shall be prima facie evidence of receipt of a citation.

43 C. Each citation issued under this section or a copy or copies
44 ~~thereof~~ OF EACH CITATION shall be prominently posted at or near each place
45 a violation referred to in the citation existed.

46 D. ~~No~~ A citation may NOT be issued after the expiration of a period
47 of six months from the date of the inspection or investigation ~~which~~ THAT
48 produced evidence of the violation.

1 Sec. 9. Section 23-417, Arizona Revised Statutes, is amended to
2 read:

3 23-417. Enforcement procedure

4 A. If the ~~director~~ CHIEF, following an inspection or investigation,
5 issues a citation pursuant to section 23-415 the ~~director~~ CHIEF, within a
6 reasonable time after termination of the inspection or investigation,
7 shall notify the employer by mail of any penalty proposed to be assessed
8 pursuant to section 23-418 and that the employer has fifteen working days
9 within which to notify the ~~director~~ CHIEF in writing if the employer
10 wishes to contest the citation or proposed assessment of penalty. If the
11 employer fails to notify the ~~director~~ CHIEF in writing within fifteen
12 working days ~~of~~ AFTER receipt of the notice that the employer intends to
13 contest the citation or penalty and a notice is not filed by any employee
14 or representative of employees pursuant to subsection D of this section
15 within such time, the citation and the assessment, as proposed, shall be a
16 final order of the commission and not subject to review by any court or
17 agency, except that the ~~director~~ CHIEF may excuse any late notification to
18 contest a citation only if the employer to whom the notice was sent shows
19 by clear and convincing evidence that the notice was not received.

20 B. The period allowed for correction of a violation shall not begin
21 to run until the entry of a final order in the case of any review
22 proceedings pursuant to this section initiated by the employer in good
23 faith and not solely for delay or avoidance of penalties. If the division
24 has reason to believe an employer has failed to correct a violation for
25 which a citation has been issued within the period allowed, the ~~director~~
26 CHIEF shall notify the employer by mail of such failure, of the penalty
27 proposed to be assessed pursuant to section 23-418 and that the employer
28 has fifteen working days within which to notify the ~~director~~ CHIEF in
29 writing if the employer wishes to contest the notification or proposed
30 assessment of penalty. If the employer fails to notify the ~~director~~ CHIEF
31 in writing within fifteen working days of receipt of the notice that the
32 employer intends to contest the notice or penalty, the notice and
33 assessment, as proposed, shall be deemed a final order of the commission
34 and not subject to review by any court or agency.

35 C. Any employer who corrects the violations for which a citation
36 was issued within the period allowed shall so notify the ~~director~~ CHIEF in
37 writing.

38 D. Any affected employee or employee representative may request a
39 hearing to appeal the period allowed an employer to abate a particular
40 violation pursuant to section 23-420 if the affected employee or employee
41 representative files the appeal with the ~~director~~ CHIEF within the
42 abatement period allowed in the citation or within fifteen days after the
43 date of receipt of the citation, whichever is shorter.

44 E. On a showing by an employer of a good faith effort to comply
45 with the abatement requirements of a citation, and that abatement has not
46 been completed because of factors beyond the reasonable control of the
47 employer, the commission or its authorized designee, after an opportunity
48 for a hearing as provided in section 23-420, shall issue an order
49 affirming or modifying the abatement requirements in such citation. The

1 rules of procedure prescribed by the commission shall provide affected
2 employees or representatives of affected employees an opportunity to
3 participate as parties to hearings under this subsection.

4 Sec. 10. Section 23-418, Arizona Revised Statutes, is amended to
5 read:

6 23-418. Penalties; violation; classification

7 A. Any employer who wilfully or repeatedly violates the
8 requirements of section 23-403 or any standard or regulation adopted
9 pursuant to section 23-410 or 23-414 or this article may be assessed a
10 civil penalty for each wilful violation of not more than the maximum civil
11 penalty, but not less than the minimum civil penalty, for wilful or
12 repeated violations adopted by the United States occupational safety and
13 health administration pursuant to the federal civil penalties inflation
14 adjustment act improvements act of 2015 (P.L. 114-74; 129 Stat. 599).

15 B. Any employer ~~who~~ THAT has received a citation for a serious
16 violation of this article shall be assessed a civil penalty for each such
17 violation of not more than the maximum civil penalty for serious
18 violations adopted by the United States occupational safety and health
19 administration pursuant to the federal civil penalties inflation
20 adjustment act improvements act of 2015 (P.L. 114-74; 129 Stat. 599).

21 C. Any employer that has received a citation for a nonserious
22 violation of this article may be assessed a civil penalty for each such
23 violation of not more than the maximum civil penalty for nonserious
24 violations adopted by the United States occupational safety and health
25 administration pursuant to the federal civil penalties inflation
26 adjustment act improvements act of 2015 (P.L. 114-74; 129 Stat. 599).

27 D. Any employer that fails to correct a violation for which PERIOD
28 a citation has been issued within the abatement period allowed for its
29 correction, which shall be suspended in case of a review proceeding before
30 an administrative law judge or the review board initiated by the employer
31 in good faith and not solely for delay or avoidance of penalties, may be
32 assessed a civil penalty of not more than the maximum civil penalty for
33 abatement violations adopted by the United States occupational safety and
34 health administration pursuant to the federal civil penalties inflation
35 adjustment act improvements act of 2015 (P.L. 114-74; 129 Stat. 599) for
36 each day during which such failure or violation continues after the
37 abatement date.

38 E. Any employer that knowingly violates the requirements of section
39 23-403 or any standard or regulation adopted pursuant to section 23-410 or
40 23-414 or this article and that violation causes death to an employee is
41 guilty of a class 6 felony, except that if the conviction is for a second
42 or subsequent violation the employer is guilty of a class 5 felony.

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

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

1 H. Any employer that violates any of the posting requirements of
2 this article shall be assessed a civil penalty for each violation of not
3 more than the maximum civil penalty for posting violations adopted by the
4 United States occupational safety and health administration pursuant to
5 the federal civil penalties inflation adjustment act improvements act of
6 2015 (P.L. 114-74; 129 Stat. 599).

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

13 J. Civil penalties owed under this article shall be paid to the
14 commission for deposit in the state general fund. After an order or
15 decision on a civil penalty becomes final pursuant to section 23-417,
16 23-421 or 23-423, the civil penalty shall act as a judgment against the
17 employer. The commission shall file the civil penalty in the office of
18 the clerk of the superior court in any county in this state and the clerk
19 shall enter the civil penalty in the civil order book and judgment docket.
20 When the civil penalty is filed and entered it is a lien for eight years
21 after the date of the final order or decision on the property of the
22 employer located in the county. Execution may issue on the civil penalty
23 within eight years in the same manner and with like effect as a judgment
24 of the superior court. The civil penalty judgment shall accrue interest
25 pursuant to section 44-1201. The commission may recover reasonable
26 attorney fees incurred pursuant to this section.

27 Sec. 11. Section 23-423, Arizona Revised Statutes, is amended to
28 read:

29 23-423. Review board rights and procedures; definition

30 A. A request for review to the review board shall be filed with the
31 commission within fifteen days after the date the decision was mailed or
32 ~~e-mailed~~ EMAILED to the parties and copies of the request shall be mailed
33 to all other parties to the proceeding before the administrative law
34 judge. ~~For the purposes of this section, "filed" means deposited in the~~
35 ~~United States mail, postage prepaid or actually received by the~~
36 ~~commission.~~

37 B. The request for review shall state the grounds for review and
38 whether oral argument is requested.

39 C. When review has been requested, the record of such oral
40 proceedings at the hearing before the administrative law judge for
41 purposes of the review shall be transcribed at the expense of the party
42 requesting review. The record shall be certified to be true and correct
43 by the office of administrative hearings.

44 D. The board shall give the parties notice of review by mail or
45 ~~e-mail~~ EMAIL.

46 E. If oral argument is requested, a hearing date shall be
47 established and notice of the hearing date will be sent with the notice of
48 review to the parties.

1 F. The review of the board shall be based on the record submitted
2 to it under subsection C of this section and such oral argument as may be
3 requested and received. If the board determines that a case has been
4 improperly, incompletely or otherwise insufficiently developed or heard by
5 the administrative law judge, it may remand the case to the administrative
6 law judge for further evidence taking, correction or other necessary
7 action.

8 G. The board may affirm, reverse, modify or supplement the decision
9 of the administrative law judge and make such disposition of the case as
10 it determines to be appropriate. The board shall make a decision within
11 thirty days after review has been submitted.

12 H. The decision of the board shall be filed with the commission and
13 a copy of the decision sent by mail or ~~e-mail~~ EMAIL to the parties. All
14 decisions of the review board shall be in writing. Decisions of the
15 review board shall be made by a majority vote of the review board. A
16 decision of the review board is binding on the ~~director~~ CHIEF and the
17 division with respect to the parties involved in the particular appeal.
18 The ~~director~~ CHIEF shall have the right to seek judicial review of a
19 review board decision irrespective of whether or not the ~~director~~ CHIEF
20 appeared or participated in the appeal to the review board.

21 I. The decision of the board is final unless within ten days after
22 the date of service of copies of such decision on the parties, one of the
23 parties applies to the court of appeals for a writ of certiorari to review
24 the lawfulness of the decision. A copy of such application shall be
25 forthwith transmitted to the clerk of the court, to the review board, to
26 the commission and to the other parties and within ten days therefrom, the
27 commission shall certify the record, proceedings and evidence before the
28 administrative law judge and the review board to the court of appeals. On
29 such filing, the court shall have jurisdiction of the proceedings and of
30 the question determined therein, and shall have power to make and enter on
31 the pleadings, testimony and proceedings set forth in such record a decree
32 affirming, modifying or setting aside in whole or in part, the order of
33 the review board and enforcing the same to the extent that such order is
34 affirmed or modified. The commencement of proceedings under this
35 subsection does not, unless ordered by the court, operate as a stay of the
36 order of the review board. No objection that has not been urged before
37 the review board shall be considered by the court, unless the failure or
38 neglect to urge such objection shall be excused because of extraordinary
39 circumstances. The findings of the review board with respect to questions
40 of fact, if supported by substantial evidence on the record considered as
41 a whole, shall be conclusive. If any party applies to the court for leave
42 to adduce additional evidence and shows to the satisfaction of the court
43 that such additional evidence is material and that there were reasonable
44 grounds for the failure to adduce such evidence in the hearing before the
45 administrative law judge, the court may order such additional evidence to
46 be taken before the administrative law judge and to be made a part of the
47 record. Petitions filed under this subsection shall be heard
48 expeditiously and the decision of the review board shall contain a
49 statement of this right of appeal.

1 J. FOR THE PURPOSES OF THIS SECTION, "FILED" MEANS DEPOSITED IN THE
2 UNITED STATES MAIL, POSTAGE PREPAID, OR ACTUALLY RECEIVED BY THE
3 COMMISSION.

4 Sec. 12. Section 23-426, Arizona Revised Statutes, is amended to
5 read:

6 23-426. Confidentiality of trade secrets

7 All information reported to or likewise obtained by the commission
8 or its representatives in connection with any inspection or investigation
9 under this article ~~which~~ THAT contains or ~~which~~ THAT might reveal a trade
10 secret shall be considered confidential for the purpose of this article,
11 except that such information may be disclosed to other representatives of
12 the division or commission concerned with carrying out this article or
13 when relevant in any proceeding under this article. In any such
14 proceeding, the ~~director~~ CHIEF, the commission, the administrative law
15 judge, the review board or the courts shall issue orders as may be
16 appropriate to protect the confidentiality of trade secrets.

17 Sec. 13. Section 23-428, Arizona Revised Statutes, is amended to
18 read:

19 23-428. State legal representation

20 A. The office of the chief counsel of the industrial commission of
21 Arizona may appear for and represent the commission or the ~~director~~ CHIEF
22 or ~~his~~ THE CHIEF'S authorized representative in any civil litigation
23 brought under this article.

24 B. In any criminal proceeding initiated under this article, the
25 office of the chief counsel of the industrial commission of Arizona may
26 appear for, represent and prosecute in the name of ~~the~~ THIS state ~~of~~
27 Arizona.

28 Sec. 14. Section 23-433, Arizona Revised Statutes, is amended to
29 read:

30 23-433. Consulting program

31 A. The division shall develop a consulting program ~~utilizing~~ THAT
32 USES visits to the workplace of employers to provide consultation and
33 advice to such employers. Such visits:

34 1. May be conducted only ~~upon~~ ON request by an employer for
35 consultation and advice on the interpretation or applicability of
36 standards, possible alternative ways of complying with applicable
37 standards or other matters related to accident prevention, occupational
38 health or obligations pursuant to this article.

39 2. Shall be limited to matters specified in the request.

40 B. If, after evaluating such request, the ~~director~~ CHIEF determines
41 an alternative means of providing consultation is more appropriate and
42 equally effective, ~~he~~ THE CHIEF may provide such alternative means rather
43 than consultation at the workplace.

44 C. The ~~director~~ CHIEF shall make recommendations regarding
45 solutions to matters within the scope of the workplace consultation.

46 D. No visit pursuant to this section shall be regarded as an
47 inspection or investigation pursuant to section 23-415. No citation shall
48 be issued nor shall any civil penalties be proposed ~~upon~~ ON such visit,
49 except that ~~nothing in~~ this section ~~shall~~ DOES NOT affect in any manner

1 any provision of this article the purpose of which is to eliminate
2 imminent danger violations.

3 Sec. 15. Section 23-471, Arizona Revised Statutes, is amended to
4 read:

5 23-471. Definitions

6 In this article, unless the context otherwise requires:

7 1. "Authorized representative" means the ~~boiler chief and~~ boiler
8 inspector employed by the division.

9 2. "Boiler" means a closed vessel in which water or other liquid is
10 heated, steam or vapor is generated or steam or vapor is superheated, or
11 any combination thereof, under pressure or vacuum for a use that is
12 external to itself, by the direct application of heat from the combustion
13 of fuels or from electricity.

14 3. "Certificate" means a certificate of competency.

15 4. "Certificate inspection" means an internal inspection, when
16 construction permits, otherwise it means as complete an inspection as
17 possible.

18 5. "CHIEF" MEANS THE CHIEF OF THE DIVISION.

19 ~~5.~~ 6. "Commission" means the industrial commission of Arizona.

20 ~~6. "Director" means the director of the division of occupational
21 safety and health.~~

22 7. "Division" means the BOILER division of ~~occupational safety and
23 health of~~ the commission.

24 8. "Heating boilers" means a steam or vapor boiler operating at a
25 pressure not exceeding fifteen pounds per square inch or a hot water
26 boiler operating at a pressure not exceeding one hundred sixty pounds per
27 square inch or a temperature not exceeding two hundred fifty degrees
28 Fahrenheit.

29 9. "High temperature water boiler" means a water boiler intended
30 for operation at pressures in excess of one hundred sixty pounds per
31 square inch or temperatures in excess of two hundred fifty degrees
32 Fahrenheit.

33 10. "Interested party" means the commission, agents of the
34 commission and any owner or operator who has been issued a notice of
35 violation.

36 11. "Lined hot water heater" means a fired lined water heater with
37 linings providing corrosion resistance for supplying potable hot water for
38 commercial purposes. Lined hot water heaters are exempted when none of
39 the following limitations are exceeded:

40 (a) Heat input of two hundred thousand British thermal units per
41 hour.

42 (b) Water temperature of two hundred ten degrees Fahrenheit.

43 (c) Nominal water-containing capacity of one hundred twenty
44 gallons.

45 12. "Owner" or "operator" means any individual or type of
46 organization, including this state and all political subdivisions of this
47 state, that has title to or controls, or has the duty to control, the
48 operation of one or more boilers, pressure vessels or lined hot water
49 heaters.

1 13. "Power boiler" means a boiler in which steam or other vapor is
2 generated at a pressure more than fifteen pounds per square inch.

3 14. "Pressure vessel" means a container for the containment of
4 pressure, either internal or external. The pressure may be obtained from
5 an external source, or by the application of heat from a direct or
6 indirect source, or any combination thereof.

7 15. "Process boiler" means a heating boiler or a power boiler used
8 for processing purposes where the make-up water exceeds ten percent.

9 Sec. 16. Section 23-474, Arizona Revised Statutes, is amended to
10 read:

11 23-474. Duties of commission

12 The commission shall:

13 1. Administer this article through the BOILER division ~~of~~
14 ~~occupational safety and health.~~

15 2. Adopt standards and regulations pursuant to section 23-475 and
16 adopt other rules as are necessary.

17 3. Exercise other powers as are necessary to carry out the duties
18 and requirements of this article.

19 Sec. 17. Section 23-477, Arizona Revised Statutes, is amended to
20 read:

21 23-477. Notice requesting investigation

22 A. Any person may make a request for an investigation by the
23 division into alleged violations of section 23-473 by giving notice to the
24 ~~director~~ CHIEF or the ~~director's~~ CHIEF'S authorized representative of such
25 violation or danger. Such notice shall be reduced to writing, set forth
26 with reasonable particularity the grounds for the notice and be signed.

27 B. If, ~~upon~~ ON receipt of such notification, the ~~director~~ CHIEF
28 determines that there are reasonable grounds to believe that such
29 violation or danger exists, the ~~director~~ CHIEF shall make an investigation
30 pursuant to this article as soon as practicable to determine if such
31 violation or danger exists. If the ~~director~~ CHIEF determines there are no
32 reasonable grounds to believe that a violation or danger exists, the
33 ~~director~~ CHIEF shall notify the requesting party in writing of such
34 determination.

35 Sec. 18. Section 23-478, Arizona Revised Statutes, is amended to
36 read:

37 23-478. Enforcement

38 A. If the division, following an inspection or investigation
39 determines that there is reasonable cause to believe that there exists a
40 violation of a standard or regulation the division shall issue a notice of
41 violation directing any repairs, improvements, changes or additions
42 necessary to eliminate the hazard. Each notice of violation shall be in
43 writing, delivered either by mail or in person and shall contain the
44 following:

45 1. A particular description of the nature of the violation,
46 including a reference to the provision of this article or of any standard
47 or regulation alleged to have been violated.

48 2. A reasonable time for the abatement of the violation.

1 B. Each notice of violation issued pursuant to this section or a
2 copy or copies of such notice of violation shall be prominently posted at
3 or near each place a violation referred to in the notice of violation
4 existed.

5 C. If in the opinion of the ~~director~~ CHIEF or the ~~director's~~
6 CHIEF'S authorized representative the continued operation of the defective
7 boiler, pressure vessel or lined hot water heater constitutes an immediate
8 danger to the safety of the occupants of the establishment or the persons
9 operating such boiler, pressure vessel or lined hot water heater the
10 ~~director~~ CHIEF or ~~director's~~ CHIEF'S authorized representative may condemn
11 such device and require the boiler, pressure vessel or lined hot water
12 heater to be returned to a condition allowing safe operation before use of
13 the boiler, pressure vessel or lined hot water heater is resumed.

14 D. On failure of an owner or operator to comply with either the
15 requirements of a notice of violation issued pursuant to subsection A of
16 this section or condemnation pursuant to ~~this~~ subsection C OF THIS
17 SECTION, the commission may file an action in the superior court in the
18 county where the violation occurred to enjoin the owner or operator from
19 engaging in further acts in violation of the requirements of the notice of
20 violation or the condemnation. Any person found to be in contempt of an
21 injunctive order of the court shall be fined not less than ~~fifty~~ \$50 nor
22 more than ~~three hundred dollars~~ \$300 with each day of violation
23 constituting a separate contempt.

24 Sec. 19. Section 23-491, Arizona Revised Statutes, is amended to
25 read:

26 23-491. Definitions

27 In this article, unless the context otherwise requires:

28 1. "Authorized representative" means the ~~elevator chief and~~
29 elevator inspector employed by the division.

30 2. "Certificate" means a certificate of inspection issued by the
31 division.

32 3. "CHIEF" MEANS THE CHIEF OF THE DIVISION.

33 ~~3.~~ 4. "Commission" means the industrial commission of Arizona.

34 ~~4.~~ 5. "Conveyance":

35 (a) Means an elevator, dumbwaiter, escalator, moving walk, manlift,
36 personnel hoist, material hoist, stage lift and special purpose personnel
37 elevator. ~~, excluding~~

38 (b) DOES NOT INCLUDE conveyances located at mines ~~and~~ THAT ARE
39 subject to regulation and inspection by the state mine inspector pursuant
40 to title 27, chapter 3.

41 ~~5. "Director" means the director of the division of occupational~~
42 ~~safety and health.~~

43 6. "Division" means the ELEVATOR division ~~of occupational safety~~
44 ~~and health~~ of the ~~industria~~ commission.

45 7. "Dumbwaiter" means a hoisting and lowering mechanism with a car
46 of limited capacity and size that moves in guides in a substantially
47 vertical direction and that is used exclusively for carrying material.

1 8. "Elevator" means a hoisting and lowering mechanism equipped with
2 a car or platform that moves in guides in substantially vertical direction
3 and that serves two or more floors of a building or structure.

4 9. "Elevator company" means a person that is engaged in the
5 business of erecting, constructing, installing, altering, servicing,
6 repairing or maintaining conveyances.

7 10. "Escalator" means a ~~power driven~~ POWER-DRIVEN, inclined,
8 continuous stairway used for raising or lowering passengers.

9 11. "Interested party" means the commission and its agents and the
10 owner or operator who has been issued a correction order.

11 12. "Manlift" means a device ~~consisting~~ THAT CONSISTS of a ~~power~~
12 ~~driven~~ POWER-DRIVEN endless belt moving in one direction only and provided
13 with steps or platforms and attached handholds for the transportation of
14 personnel from floor to floor.

15 13. "Material hoist" means a hoist for raising and lowering
16 materials only and prohibiting the hoisting of persons.

17 14. "Moving walk" means a type of ~~passenger carrying~~
18 PASSENGER-CARRYING device on which passengers stand or walk and in which
19 the ~~passenger carrying~~ PASSENGER-CARRYING surface remains parallel to its
20 direction of motion and is uninterrupted.

21 15. "Owner" or "operator":

22 (a) Means an individual or organization, including this state and
23 all political subdivisions of this state, ~~who~~ THAT has title to, controls
24 or has the duty to control the operation of one or more conveyances. ~~;~~ ~~but~~
25 ~~shall~~

26 (b) DOES not include an individual or organization THAT IS engaged
27 in mining or metallurgical operations AND whose operation is subject to
28 regulation and inspection by the state mine inspector pursuant to title
29 27, chapter 3.

30 16. "Personnel hoist":

31 (a) Means a mechanism ~~for use~~ THAT IS USED in connection with the
32 construction, alteration, maintenance or demolition of a building,
33 structure or other work, THAT IS used for hoisting and lowering workers
34 and materials and THAT IS equipped with a car that moves on guide members
35 during its vertical movement. ~~The term~~

36 (b) Includes a hoistway of a personnel hoist.

37 17. "Private elevator inspector" means an individual who is
38 authorized by the commission under section 23-491.16 to conduct
39 inspections under this article.

40 18. "Special purpose personnel elevator" means a passenger, ~~hand~~
41 ~~powered~~ HAND-POWERED, counterweighted device or an ~~electric powered~~
42 ELECTRIC-POWERED device that travels vertically in guides and that serves
43 two or more landings.

44 19. "Stage lift" means a hoisting and lowering mechanism equipped
45 with a platform that moves in guides in a substantially vertical direction
46 and that serves one or more landings.

47 Sec. 20. Section 23-491.03, Arizona Revised Statutes, is amended to
48 read:

49 23-491.03. Existing conveyances

1 Existing conveyances lawfully installed ~~prior to~~ BEFORE the
2 effective date of this article may continue in use if the use is, in the
3 opinion of the ~~director~~ CHIEF, not a hazard to life, health or property.

4 Sec. 21. Section 23-491.04, Arizona Revised Statutes, is amended to
5 read:

6 23-491.04. Commission powers and duties

7 A. The commission shall:

8 1. Administer this article through the division ~~of occupational~~
9 ~~safety and health~~.

10 2. ~~Promulgate~~ ADOPT standards and regulations pursuant to section
11 23-491.06 as required and ~~promulgate~~ ADOPT such other rules and
12 regulations and exercise such other powers as are necessary to carry out
13 this article.

14 B. The commission, by rule and regulation, may set fees not to
15 exceed the actual cost for inspections performed pursuant to this article.

16 Sec. 22. Section 23-491.08, Arizona Revised Statutes, is amended to
17 read:

18 23-491.08. Notice requesting investigation; confidentiality;
19 determination of grounds

20 A. Any person may make a request for an investigation by the
21 division into alleged violations of section 23-491.02 by giving notice to
22 the ~~director~~ CHIEF or the ~~director's~~ CHIEF'S authorized representative of
23 such violation or danger. Such notice shall be in writing, shall set
24 forth with reasonable particularity the grounds for the notice and shall
25 be signed by the person making the request. ~~upon~~ ON the request of the
26 person signing the notice, such person's name shall not appear on any copy
27 of such notice or any record published, released or made available.

28 B. If ~~upon~~ ON receipt of such notification the ~~director~~ CHIEF
29 determines that there are reasonable grounds to believe that such
30 violation or danger exists, the ~~director~~ CHIEF shall make an investigation
31 in accordance with ~~the provisions of~~ this article as soon as practicable
32 to determine if such violation or danger exists. If the ~~director~~ CHIEF
33 determines there are no reasonable grounds to believe that a violation or
34 danger exists, the ~~director~~ CHIEF shall notify the requesting party in
35 writing of such a determination.

36 Sec. 23. Section 23-491.09, Arizona Revised Statutes, is amended to
37 read:

38 23-491.09. Enforcement

39 A. If the division, following an inspection or investigation,
40 determines that there is reasonable cause to believe that there is a
41 violation of a standard or regulation, the division shall issue a
42 correction order directing any repairs, improvements, changes or additions
43 necessary to eliminate the hazard. Each correction order shall be in
44 writing, delivered either by mail or in person and shall contain the
45 following:

46 1. A particular description of the nature of the violation,
47 including a reference to the provision of this article or of any standard
48 or regulation alleged to have been violated.

49 2. A reasonable time for the abatement of the violation.

1 B. No correction order may be issued after the expiration of a
2 period of six months from the date of the inspection or investigation
3 ~~which~~ THAT produced evidence of the violation.

4 C. If, in the opinion of the ~~director~~ CHIEF or the ~~director's~~
5 CHIEF'S authorized representative, the continued operation of the
6 defective device constitutes an immediate danger to the safety of the
7 persons operating or being conveyed by such device, the ~~director~~ CHIEF or
8 the ~~director's~~ CHIEF'S authorized representative may condemn such device
9 and require it to be returned to a condition allowing safe operation
10 before its use is resumed.

11 D. ~~Upon~~ ON failure of an owner or operator to comply with either
12 the requirements of a correction order issued pursuant to subsection A OF
13 THIS SECTION or condemnation pursuant to ~~this~~ subsection C OF THIS
14 SECTION, the commission may file an action in the superior court ~~of~~ IN the
15 county where the violation occurred to enjoin the owner or operator from
16 engaging in further acts in violation of the requirements of the
17 correction order or the condemnation. Any person found to be in contempt
18 of an injunctive order of the court shall be fined not less than ~~fifty~~ \$50
19 nor more than ~~three hundred dollars~~ \$300 with each day of violation
20 constituting a separate contempt.

21 Sec. 24. Section 23-1065, Arizona Revised Statutes, is amended to
22 read:

23 23-1065. Special fund; purposes; investment committee

24 A. The ~~industriat~~ commission may direct the payment into the state
25 treasury of not to exceed one percent of all premiums received by private
26 insurance carriers during the immediately preceding calendar year. The
27 same percentage shall be assessed against self-insurers based on the total
28 cost to the self-insured employer as provided in section 23-961,
29 subsection G. Such assessments shall be computed on the same premium
30 basis as provided for in section 23-961, subsections G, H, J, K and L and
31 shall be ~~no~~ NOT more than is necessary to keep the special fund
32 actuarially sound. Such payments shall be placed in a special fund within
33 the administrative fund to provide, at the discretion of the commission,
34 such additional awards as may be necessary to enable injured employees to
35 accept the benefits of any law of this state or of the United States, or
36 both jointly, for promotion of vocational rehabilitation of persons with
37 disabilities in industry.

38 B. In claims involving an employee who has a preexisting
39 ~~industrially-related~~ INDUSTRIALLY RELATED permanent physical impairment of
40 the type specified in section 23-1044, subsection B and who thereafter
41 suffers an additional permanent physical impairment of the type specified
42 in such subsection, the claim involving the subsequent impairment is
43 eligible for reimbursement, as provided by subsection D of this section,
44 according to the following:

45 1. The employer in whose employ the subsequent impairment occurred
46 or its insurance carrier is solely responsible for all temporary
47 disability compensation to which the employee is entitled and for an
48 amount equal to the permanent disability compensation provided by section
49 23-1044, subsection B for the subsequent impairment. If the employee is

1 determined to have sustained no loss of earning capacity after the
2 medically stationary date, the employer or carrier shall pay ~~him~~ THE
3 EMPLOYEE as a vocational rehabilitation bonus the amount calculated under
4 this paragraph as a lump sum, which shall be a credit against any
5 permanent compensation benefits awarded in any subsequent proceeding. The
6 amount of the vocational rehabilitation bonus for which the employer or
7 carrier is responsible under this paragraph shall be calculated solely on
8 physical, medically rated permanent impairment and not on occupational or
9 other factors.

10 2. If the commission determines that the employee is entitled to
11 compensation for loss of earning capacity under section 23-1044,
12 subsection C or permanent total disability under section 23-1045,
13 subsection B, the total amount of permanent benefits for which the
14 employer or carrier is solely responsible under paragraph 1 of this
15 subsection shall be expended first, with monthly payments made according
16 to the loss of earning capacity or permanent total disability award. The
17 employer or carrier and the special fund are equally responsible for the
18 remaining amount of compensation for loss of earning capacity under
19 section 23-1044, subsection C or permanent total disability under section
20 23-1045, subsection B. This paragraph ~~shall~~ DOES not ~~be construed as~~
21 ~~requiring~~ REQUIRE payment of any benefits under section 23-1044,
22 subsection B in any case in which an employee is entitled to benefits for
23 loss of earning capacity under section 23-1044, subsection C or permanent
24 total disability benefits under section 23-1045, subsection B.

25 C. In claims involving an employee who has a preexisting physical
26 impairment that is not ~~industrially-related~~ INDUSTRIALLY RELATED and,
27 whether congenital or due to injury or disease, is of such seriousness as
28 to constitute a hindrance or obstacle to employment or to obtaining
29 reemployment if the employee becomes unemployed, and the impairment equals
30 or exceeds a ten percent permanent impairment evaluated in accordance with
31 the American medical association guides to the evaluation of permanent
32 impairment, and the employee thereafter suffers an additional permanent
33 impairment not of the type specified in section 23-1044, subsection B, the
34 claim involving the subsequent impairment is eligible for reimbursement,
35 as provided by subsection D of this section, under the following
36 conditions:

37 1. The employer in whose employ the subsequent impairment occurred
38 or its carrier is solely responsible for all temporary disability
39 compensation to which the employee is entitled.

40 2. The employer had knowledge of the permanent impairment at the
41 time the employee was hired, or that the employee continued in employment
42 after the employer acquired such knowledge.

43 3. The employee's preexisting impairment is due to one or more of
44 the following:

- 45 (a) Epilepsy.
- 46 (b) Diabetes.
- 47 (c) Cardiac disease.
- 48 (d) Arthritis.
- 49 (e) Amputated foot, leg, arm or hand.

- 1 (f) Loss of sight of one or both eyes or a partial loss of
2 uncorrected vision of more than seventy-five percent bilaterally.
- 3 (g) Residual disability from poliomyelitis.
- 4 (h) Cerebral palsy.
- 5 (i) Multiple sclerosis.
- 6 (j) Parkinson's disease.
- 7 (k) Cerebral vascular accident.
- 8 (l) Tuberculosis.
- 9 (m) Silicosis.
- 10 (n) Psychoneurotic disability following treatment in a recognized
11 medical or mental institution.
- 12 (o) Hemophilia.
- 13 (p) Chronic osteomyelitis.
- 14 (q) Hyperinsulinism.
- 15 (r) Muscular dystrophies.
- 16 (s) Arteriosclerosis.
- 17 (t) Thrombophlebitis.
- 18 (u) Varicose veins.
- 19 (v) Heavy metal poisoning.
- 20 (w) Ionizing radiation injury.
- 21 (x) Compressed air sequelae.
- 22 (y) Ruptured intervertebral disk.
- 23 4. The employer or carrier and the special fund are equally
24 responsible for the amount of compensation for loss of earning capacity
25 under section 23-1044, subsection C or permanent total disability under
26 section 23-1045, subsection B.
- 27 D. The employer or insurance carrier shall notify the commission of
28 its intent to claim reimbursement for an eligible claim under subsection B
29 or C of this section not later than the time the employer or insurance
30 carrier notifies the commission pursuant to section 23-1047, subsection A.
31 ~~Upon~~ ON receiving notice the commission may expend funds from the special
32 fund created by this section for travel and discovery procedures and for
33 the employment of such independent legal, medical, rehabilitation, claims
34 or labor market consultants or experts as may be deemed necessary by the
35 commission to assist in the determination of the liability of the special
36 fund, if any, under subsection B or C of this section. In the event there
37 is any dispute regarding liability to the special fund pursuant to
38 subsection B or C of this section, the commission shall not delay the
39 issuance of a permanent award pursuant to section 23-1047, subsection B.
- 40 E. If the special fund created by this section is determined to be
41 liable under either subsection B or C of this section, the employer or
42 insurance carrier that is primarily liable shall pay the entire amount of
43 the award to the injured employee and the commission shall by rule provide
44 for the reimbursement of the employer or insurance carrier on an annual
45 basis. In any case arising out of subsection B or C of this section, the
46 written approval of the special fund is required for the compromise of any
47 claim made pursuant to section 23-1023. In any such case, written
48 approval shall not be unreasonably withheld by the special fund, carrier,
49 self-insured employer or other person responsible for the payment of

1 compensation. Failure to obtain the written approval of the special fund
2 shall not cause the injured worker to lose any benefits but ends the
3 special fund's liability for reimbursement and makes the employer or
4 carrier solely responsible for the payment of the remaining benefits.

5 F. The employer or insurance carrier shall make its claim for
6 reimbursement to the commission not later than November 1 each year, for
7 payments made pursuant to subsection B or C of this section during the
8 twelve months before October 1 each year. Claims shall be paid before
9 December 31 each year. If the total annual reserved liabilities of the
10 special fund obligated under subsections B and C of this section exceed
11 ~~six million dollars~~ \$6,000,000, as determined by the annual actuarial
12 study performed pursuant to subsection I of this section, the commission,
13 after notice and a hearing, may levy an additional assessment under
14 subsection A of this section of up to one-half percent to meet such
15 liabilities. Any insurance carrier or employer ~~who~~ THAT may be adversely
16 affected by the additional assessment may at any time before the sixtieth
17 day after such additional assessment is ordered file a complaint
18 challenging the validity of the additional assessment in the superior
19 court in Maricopa county for a judicial review of the additional
20 assessment. On judicial review the determination of the commission shall
21 be upheld if supported by substantial evidence in the record considered as
22 a whole.

23 G. In the event the injured employee is awarded additional
24 compensation, under subsection A of this section, the commission retains
25 jurisdiction to amend, alter or change the award ~~upon~~ ON a change in the
26 physical condition of the injured employee resulting from the injury.

27 H. On receiving notice that the special fund may be liable under
28 this chapter, the commission may spend monies from the special fund
29 established by this section for expenses that are necessary to assist in
30 the processing, payment or determination of liability of the fund. These
31 expenses may include travel, discovery procedures and employing any legal,
32 medical, rehabilitation, claims or labor market consultant, examiner or
33 expert.

34 I. The commission shall cause an annual actuarial study of the
35 special award fund to be made by a qualified actuary who is a member of
36 the society of actuaries. The actuary shall make specific recommendations
37 for maintaining the fund on a sound actuarial basis. The actuarial study
38 shall be completed on or before September 1.

39 J. The special fund of the commission consists of all monies from
40 premiums and assessments, except penalties assessed pursuant to this
41 chapter, received and paid into the fund, property and securities acquired
42 by the use of monies in the fund, interest earned on monies in the fund
43 and other monies derived from the sale, use or lease of properties
44 belonging to the fund. The special fund created by this section shall be
45 administered by the director of the ~~industrial~~ commission, subject to the
46 authority of the ~~industrial~~ commission. The director of the commission
47 with approval of the investment committee, in the administration of the
48 special fund, may provide loans, subject to repayment, budgetary review
49 and legislative appropriation, to the administrative fund for the purposes

1 and subject to section 23-1081, acquire real property and acquire or
2 construct a building or other improvements on the real property as may be
3 necessary to house, contain, furnish, equip and maintain offices and space
4 for departmental and operational facilities of the commission. The
5 commission, when using space constructed pursuant to this section, shall
6 make equal payments of rent on a semiannual basis, which shall be
7 deposited in the special fund. The investment committee shall determine
8 the amount of the rent, which must be at least equal to or greater than
9 that determined by the joint committee on capital review for buildings of
10 similar design and construction as provided by section 41-792.01.

11 K. There is established an investment committee consisting of the
12 director and the chairman of the commission and three persons
13 knowledgeable in investments and economics appointed by the governor. Of
14 the members appointed by the governor, one shall be a professional in the
15 investment business, one shall represent workers' compensation insurers
16 and one shall represent self-insurers. The term of members appointed by
17 the governor is three years, which shall begin on July 1 and end on June
18 30 three years later. The committee shall prescribe by rule investment
19 policies and supervise the investment activities of the special fund.

20 L. Each member of the investment committee, other than the director
21 of the commission, is eligible to receive from the special fund:

22 1. Compensation of ~~fifty dollars~~ \$50 for each day while in actual
23 attendance at meetings of the investment committee.

24 2. Reimbursement for expenses pursuant to title 38, chapter 4,
25 article 2.

26 M. The investment committee shall meet at least once every month.

27 N. The investment committee shall periodically review and assess
28 the investment strategy.

29 O. The investment committee, by resolution, may invest and reinvest
30 the surplus or reserves in the funds established under this chapter in any
31 legal investments authorized under section 38-718.

32 P. In addition to the investments authorized under section 38-718,
33 the investment committee may approve the investment in real property and
34 improvements on real property to house and maintain offices of the
35 commission, including spaces for its departmental and operational
36 facilities. Title to the real estate and improvements on the real estate
37 vests in the special fund of the commission, and the assets become part of
38 the fund as provided by this section.

39 Q. The investment committee may appoint a custodian for the
40 safekeeping of all or any portion of the investments owned by the special
41 fund of the commission and may register stocks, bonds and other
42 investments in the name of a nominee. Except for investments held by a
43 custodian or in the name of a nominee, all securities purchased pursuant
44 to subsection 0 of this section shall promptly be deposited with the state
45 treasurer as custodian thereof, who shall collect the dividends, interest
46 and principal thereof, and pay, when collected, into the special
47 fund. The state treasurer shall pay all vouchers drawn for the purchase
48 of securities. The director may sell any of the securities as the
49 director deems appropriate, if authorized by resolution of the investment

1 committee, and the proceeds therefrom shall be payable to the state
2 treasurer for the account of the special fund ~~upon~~ ON delivery of the
3 securities to the purchaser or the purchaser's agent.

4 Sec. 25. Section 41-1005, Arizona Revised Statutes, is amended to
5 read:

6 41-1005. Exemptions

7 A. This chapter does not apply to any:

8 1. Rule that relates to the use of public works, including streets
9 and highways, under the jurisdiction of an agency if the effect of the
10 order is indicated to the public by means of signs or signals.

11 2. Order or rule of the Arizona game and fish commission that does
12 the following:

13 (a) Opens, closes or alters seasons or establishes bag or
14 possession limits for wildlife.

15 (b) Establishes a fee pursuant to section 5-321, 5-322 or 5-327.

16 (c) Establishes a license classification, fee or application fee
17 pursuant to title 17, chapter 3, article 2.

18 (d) Limits the number or use of licenses or permits that are issued
19 to nonresidents pursuant to section 17-332.

20 3. Rule relating to section 28-641 or to any rule regulating motor
21 vehicle operation that relates to speed, parking, standing, stopping or
22 passing enacted pursuant to title 28, chapter 3.

23 4. Rule concerning only the internal management of an agency that
24 does not directly and substantially affect the procedural or substantive
25 rights or duties of any segment of the public.

26 5. Rule that only establishes specific prices to be charged for
27 particular goods or services sold by an agency.

28 6. Rule concerning only the physical servicing, maintenance or care
29 of agency owned or operated facilities or property.

30 7. Rule or substantive policy statement concerning inmates or
31 committed youths of a correctional or detention facility in secure custody
32 or patients admitted to a hospital if made by the state department of
33 corrections, the department of juvenile corrections, the board of
34 executive clemency or the department of health services or a facility or
35 hospital under the jurisdiction of the state department of corrections,
36 the department of juvenile corrections or the department of health
37 services.

38 8. Form whose contents or substantive requirements are prescribed
39 by rule or statute and instructions for the execution or use of the form.

40 9. Capped fee-for-service schedule adopted by the Arizona health
41 care cost containment system administration pursuant to title 36,
42 chapter 29.

43 10. Fees prescribed by section 6-125.

44 11. Order of the director of water resources adopting or modifying
45 a management plan pursuant to title 45, chapter 2, article 9.

46 12. Fees established under section 3-1086.

47 13. Fees established under sections 41-4010 and 41-4042.

- 1 14. Rule or other matter relating to agency contracts.
- 2 15. Fees established under section 32-2067 or 32-2132.
- 3 16. Rules made pursuant to section 5-111, subsection A.
- 4 17. Rules made by the Arizona state parks board concerning the
5 operation of the Tonto natural bridge state park, the facilities located
6 in the Tonto natural bridge state park and the entrance fees to the Tonto
7 natural bridge state park.
- 8 18. Fees or charges established under section 41-511.05.
- 9 19. Emergency medical services protocols except as provided in
10 section 36-2205, subsection B.
- 11 20. Fee schedules established pursuant to section 36-3409.
- 12 21. Procedures of the state transportation board as prescribed in
13 section 28-7048.
- 14 22. Rules made by the state department of corrections.
- 15 23. Fees prescribed pursuant to section 32-1527.
- 16 24. Rules made by the department of economic security pursuant to
17 section 46-805.
- 18 25. Schedule of fees prescribed by section 23-908, EXCEPT THAT THE
19 INDUSTRIAL COMMISSION OF ARIZONA MUST POST THE SCHEDULE OF FEES ON ITS
20 WEBSITE AND PREPARE AND FILE A NOTICE OF PUBLIC INFORMATION WITH THE
21 WEBSITE ADDRESS TO BE PUBLISHED IN THE REGISTER.
- 22 26. Procedure that is established pursuant to title 23, chapter 6,
23 article 6.
- 24 27. Rules, administrative policies, procedures and guidelines
25 adopted for any purpose by the Arizona commerce authority pursuant to
26 chapter 10 of this title if the authority provides, as appropriate under
27 the circumstances, for notice of an opportunity for comment on the
28 proposed rules, administrative policies, procedures and guidelines.
- 29 28. Rules made by a marketing commission or marketing committee
30 pursuant to section 3-414.
- 31 29. Administration of public assistance program monies authorized
32 for liabilities that are incurred for disasters declared pursuant to
33 sections 26-303 and 35-192.
- 34 30. User charges, tolls, fares, rents, advertising and sponsorship
35 charges, services charges or similar charges established pursuant to
36 section 28-7705.
- 37 31. Administration and implementation of the hospital assessment
38 pursuant to section 36-2901.08, except that the Arizona health care cost
39 containment system administration must provide notice and an opportunity
40 for public comment at least thirty days before establishing or
41 implementing the administration of the assessment.
- 42 32. Rules made by the Arizona department of agriculture to adopt
43 and implement the provisions of the federal milk ordinance as prescribed
44 by section 3-605.
- 45 33. Rules made by the Arizona department of agriculture to adopt,
46 implement and administer the United States food and drug administration
47 produce safety rule (21 Code of Federal Regulations part 112) and any
48 other federal produce safety regulation, order or guideline or other
49 requirement adopted pursuant to the FDA food safety modernization act

1 (P.L. 111-353; 21 United States Code sections 2201 through 2252) as
2 provided by title 3, chapter 3, article 4.1.

3 34. Calculations that are performed by the department of economic
4 security and that are associated with the adjustment of the sliding fee
5 scale and formula for determining child care assistance pursuant to
6 section 46-805.

7 35. Rules made by the Arizona department of agriculture to
8 implement and administer the livestock operator fire and flood assistance
9 grant program established by section 3-109.03.

10 B. Notwithstanding subsection A, paragraph 21 of this section, if
11 the federal highway administration authorizes the privatization of rest
12 areas, the state transportation board shall make rules governing the lease
13 or license by the department of transportation to a private entity for the
14 purposes of privatization of a rest area.

15 C. Coincident with ~~the~~ making ~~of~~ a final rule pursuant to an
16 exemption from the applicability of this chapter under this section,
17 another statute or session law, the agency shall:

18 1. Prepare a notice and follow formatting guidelines prescribed by
19 the secretary of state.

20 2. Prepare the rulemaking exemption ~~notices~~ NOTICE pursuant to
21 chapter 6.2 of this title.

22 3. File ~~a copy of~~ the rule with the secretary of state for
23 publication pursuant to section 41-1012 ~~and provide a copy to the council~~.

24 4. PROVIDE A COPY OF THE RULE TO THE COUNCIL.

25 D. Unless otherwise required by law, articles 2, 3, 4 and 5 of this
26 chapter do not apply to the Arizona board of regents and the institutions
27 under its jurisdiction, except that the Arizona board of regents shall
28 make policies or rules for the board and the institutions under its
29 jurisdiction that provide, as appropriate under the circumstances, for
30 notice of and opportunity for comment on the policies or rules proposed.

31 E. Unless otherwise required by law, articles 2, 3, 4 and 5 of this
32 chapter do not apply to the Arizona state schools for the deaf and the
33 blind, except that the board of directors of all the state schools for the
34 deaf and the blind shall adopt policies for the board and the schools
35 under its jurisdiction that provide, as appropriate under the
36 circumstances, for notice of and opportunity for comment on the policies
37 proposed for adoption.

38 F. Unless otherwise required by law, articles 2, 3, 4 and 5 of this
39 chapter do not apply to the state board of education, except that the
40 state board of education shall adopt policies or rules for the board and
41 the institutions under its jurisdiction that provide, as appropriate under
42 the circumstances, for notice of and opportunity for comment on the
43 policies or rules proposed for adoption. In order to implement or change
44 any rule, the state board of education shall provide at least two
45 opportunities for public comment. The state board of education shall
46 consider the fiscal impact of any proposed rule pursuant to this
47 subsection.

48 G. Unless otherwise required by law, articles 2, 3, 4 and 5 of this
49 chapter do not apply to the state board for charter schools, except that

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1 the board shall adopt policies or rules for the board and the charter
2 schools sponsored by the board that provide, as appropriate under the
3 circumstances, for notice of and opportunity for comment on the policies
4 or rules proposed for adoption. In order to implement or change any
5 policy or rule, the board shall provide at least two opportunities for
6 public comment. The state board for charter schools shall consider the
7 fiscal impact of any proposed rule pursuant to this subsection."
8 Amend title to conform

JEFF WENINGER

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