

State of Arizona  
House of Representatives  
Forty-eighth Legislature  
First Regular Session  
2007

# HOUSE BILL 2194

AN ACT

AMENDING SECTION 23-1023, ARIZONA REVISED STATUTES; RELATING TO WORKERS'  
COMPENSATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 23-1023, Arizona Revised Statutes, is amended to  
3 read:

4 23-1023. Liability of third person to injured employee:  
5 election of remedies

6 A. If an employee WHO IS entitled to compensation under this chapter  
7 is injured or killed by the negligence or wrong of another PERSON not in the  
8 same employ, ~~such~~ THE injured employee, or in event of death ~~his~~ THE INJURED  
9 EMPLOYEE'S dependents, may pursue ~~his~~ THE INJURED PERSON'S remedy against  
10 ~~such~~ THE other person.

11 B. If the employee WHO IS entitled to compensation under this  
12 chapter, ~~or his~~ THE EMPLOYEE'S dependents, ~~does~~ DO not pursue ~~his or their~~ A  
13 remedy PURSUANT TO THIS SECTION against ~~such~~ THE other person by instituting  
14 an action within one year after the cause of action accrues, ~~the claim~~  
15 ~~against such other person shall be deemed assigned to the insurance carrier,~~  
16 ~~or to the person liable for the payment thereof.~~ OR IF AFTER INSTITUTING THE  
17 ACTION, THE EMPLOYEE OR THE EMPLOYEE'S DEPENDENTS FAIL TO FULLY PROSECUTE THE  
18 CLAIM AND THE ACTION IS DISMISSED, ALL OF THE FOLLOWING APPLY:

19 1. THE INSURANCE CARRIER OR SELF-INSURED EMPLOYER MAY INSTITUTE AN  
20 ACTION AGAINST THE OTHER PERSON.

21 2. ANY DISMISSAL THAT IS ENTERED FOR LACK OF PROSECUTION OF AN ACTION  
22 INSTITUTED BY THE EMPLOYEE OR THE EMPLOYEE'S DEPENDENTS SHALL NOT PREJUDICE  
23 THE RIGHT OF THE INSURANCE CARRIER OR SELF-INSURED EMPLOYER TO RECOVER THE  
24 AMOUNT OF BENEFITS PAID.

25 3. IF THE STATUTE OF LIMITATIONS OF THE CLAIM IS ONE YEAR AFTER THE  
26 CAUSE OF ACTION ACCRUES, THE INSURANCE CARRIER OR SELF-INSURED EMPLOYER MAY  
27 FILE THE ACTION PRIOR TO ONE YEAR AFTER THE CAUSE OF ACTION ACCRUES.

28 4. ~~Such a~~ THE claim ~~so assigned~~ may be prosecuted or compromised by  
29 the insurance carrier or the person liable for the ~~payment thereof,~~  
30 SELF-INSURED EMPLOYER or may be reassigned in its entirety to the employee or  
31 ~~his~~ THE EMPLOYEE'S dependents. After the reassignment, the employee WHO IS  
32 entitled to compensation, or ~~his~~ THE EMPLOYEE'S dependents, shall have the  
33 same rights to pursue the claim as if it had been filed within the first  
34 year.

35 C. THE EMPLOYEE OR THE EMPLOYEE'S DEPENDENTS SHALL PROVIDE THE  
36 INSURANCE CARRIER OR THE SELF-INSURED EMPLOYER WRITTEN NOTICE OF THE  
37 INTENTION TO BRING AN ACTION AGAINST A THIRD PARTY AND SHALL PROVIDE TO THE  
38 INSURANCE CARRIER OR SELF-INSURED EMPLOYER TIMELY AND PERIODIC NOTICE OF ALL  
39 PLEADINGS AND RULINGS CONCERNING THE STATUS OF THE PENDING ACTION. IN ANY  
40 ACTION INSTITUTED BY THE EMPLOYEE OR THE EMPLOYEE'S DEPENDENTS, THE INSURANCE  
41 CARRIER OR THE SELF-INSURED EMPLOYER SHALL HAVE THE RIGHT TO INTERVENE AT ANY  
42 TIME TO PROTECT THE INSURANCE CARRIER'S OR THE SELF-INSURED EMPLOYER'S  
43 INTERESTS.

44 ~~C.~~ D. IF ~~he~~ THE EMPLOYEE proceeds against ~~such~~ THE other person,  
45 compensation and medical, surgical and hospital benefits shall be paid as

1 provided in this chapter and the insurance carrier or other person liable to  
2 pay the claim shall have a lien on the amount actually collectable from ~~such~~  
3 ~~THE~~ other person to the extent of such compensation and medical, surgical and  
4 hospital benefits paid. This lien shall not be subject to a collection fee.  
5 The amount actually collectable shall be the total recovery less the  
6 reasonable and necessary expenses, including ~~attorneys'~~ ATTORNEY fees,  
7 actually expended in securing ~~such~~ THE recovery. The insurance carrier or  
8 person shall contribute only the deficiency between the amount actually  
9 collected and the compensation and medical, surgical and hospital benefits  
10 provided or estimated by ~~the provisions of~~ this chapter for ~~such~~ THE case.  
11 Compromise of any claim by the employee or ~~his~~ THE EMPLOYEE'S dependents at  
12 an amount less than the compensation and medical, surgical and hospital  
13 benefits provided for shall be made only with written approval of the  
14 ~~compensation fund, or of the person~~ INSURANCE CARRIER OR SELF-INSURED  
15 EMPLOYER liable to pay the claim.

16 E. FOR PURPOSES OF THIS SECTION, THE COMMISSION SHALL HAVE THE SAME  
17 RIGHTS AS AN INSURANCE CARRIER OR SELF-INSURED EMPLOYER.