

REFERENCE TITLE: insurance; lienholder; third-party liability

State of Arizona  
Senate  
Fifty-sixth Legislature  
Second Regular Session  
2024

## **SB 1498**

Introduced by  
Senator Mesnard

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  
7 chapter is injured or killed or further aggravates a previously accepted  
8 industrial injury by the negligence or wrong of another person not in the  
9 same employ, the injured employee, or in event of death the injured  
10 employee's dependents, may pursue the injured person's remedy against the  
11 other person.

12 B. If the employee who is entitled to compensation under this  
13 chapter or the employee's dependents do not pursue a remedy pursuant to  
14 this section against the other person by instituting an action within one  
15 year after the cause of action accrues, or if after instituting the  
16 action, the employee or the employee's dependents fail to fully prosecute  
17 the claim and the action is dismissed, the claim against the other person  
18 is deemed assigned to the insurance carrier or self-insured employer and  
19 all of the following apply:

20 1. The insurance carrier or self-insured employer may institute an  
21 action against the other person.

22 2. Any dismissal that is entered for lack of prosecution of an  
23 action instituted by the employee or the employee's dependents shall not  
24 prejudice the right of the insurance carrier or self-insured employer to  
25 recover the amount of benefits paid.

26 3. If the statute of limitations of the claim is one year after the  
27 cause of action accrues, the insurance carrier or self-insured employer  
28 may file the action prior to one year after the cause of action accrues.

29 4. The claim may be prosecuted or compromised by the insurance  
30 carrier or the person liable for the self-insured employer or may be  
31 reassigned in its entirety to the employee or the employee's dependents.  
32 After the reassignment, the employee who is entitled to compensation, or  
33 the employee's dependents, shall have the same rights to pursue the claim  
34 as if it had been filed within the first 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  
38 the insurance carrier or self-insured employer timely and periodic notice  
39 of all pleadings and rulings concerning the status of the pending action.  
40 In any action instituted by the employee or the employee's dependents, the  
41 insurance carrier or the self-insured employer shall have the right to  
42 intervene at any time to protect the insurance carrier's or the  
43 self-insured employer's interests.

1           D. If the employee proceeds against the other person, compensation  
2 and medical, surgical and hospital benefits shall be paid as provided in  
3 this chapter and the insurance carrier or other person liable to pay the  
4 claim shall have a lien on the amount actually collectable from the other  
5 person to the extent of such compensation and medical, surgical and  
6 hospital benefits paid. This lien ~~shall~~ IS not ~~be~~ subject to a collection  
7 fee. ~~The amount actually collectable shall be the total recovery less the~~  
8 ~~reasonable and necessary expenses, including attorney fees, actually~~  
9 ~~expended in securing the recovery.~~ In any action arising out of an  
10 aggravation of a previously accepted industrial injury, the lien shall  
11 ~~only~~ apply ONLY to amounts expended for compensation and treatment of the  
12 aggravation. The insurance carrier or person shall contribute only the  
13 deficiency between the amount actually collected and the compensation and  
14 medical, surgical and hospital benefits provided or estimated by this  
15 chapter for the case. Compromise of any claim by the employee or the  
16 employee's dependents at an amount less than the compensation and medical,  
17 surgical and hospital benefits provided for shall be made only with  
18 written approval of the insurance carrier or self-insured employer liable  
19 to pay the claim. FOR THE PURPOSES OF SUBSECTION:

- 20           1. "AMOUNT ACTUALLY COLLECTABLE":  
21           (a) MEANS THE TOTAL RECOVERY MINUS THE REASONABLE AND NECESSARY  
22 EXPENSES.  
23           (b) INCLUDES ATTORNEY FEES ACTUALLY EXPENDED IN SECURING THE  
24 RECOVERY.  
25           2. "TOTAL RECOVERY" MEANS THE PORTION OF THE SETTLEMENT, JUDGMENT  
26 OR AWARD THAT REPRESENTS PAYMENT TO THE EMPLOYEE FOR PAST AND FUTURE  
27 MEDICAL EXPENSES AND PAST AND FUTURE LOST WAGES.

28           E. For THE purposes of this section, the commission shall have the  
29 same rights as an insurance carrier or self-insured employer.