

State of Arizona  
Senate  
Fifty-first Legislature  
Second Regular Session  
2014

**CHAPTER 186**  
**SENATE BILL 1181**

AN ACT

AMENDING SECTIONS 20-661, 20-662, 20-663, 20-664, 20-666, 20-667, 20-673, 20-674 AND 20-676, ARIZONA REVISED STATUTES; REPEALING SECTION 20-679, ARIZONA REVISED STATUTES; AMENDING TITLE 20, CHAPTER 3, ARTICLE 6, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 20-679; AMENDING SECTIONS 20-680, 23-902, 23-961, 23-966, 23-1065 AND 23-1081, ARIZONA REVISED STATUTES; MAKING A TRANSFER; RELATING TO THE ARIZONA PROPERTY AND CASUALTY INSURANCE GUARANTY FUND.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 20-661, Arizona Revised Statutes, is amended to  
3 read:

4 20-661. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Account" means any one of the ~~two~~ THREE accounts within the  
7 Arizona property and casualty insurance guaranty fund.

8 2. "Board" means the guaranty fund board.

9 3. "Covered claim" means an unpaid claim, including one for unearned  
10 premium, which arises out of and is within the coverage of an insurance  
11 policy to which this article applies issued by an insurer, if such insurer  
12 becomes an insolvent insurer after August 27, 1977 and the claimant or  
13 insured is a resident of this state at the time of the insured event or the  
14 property from which the claim arises is permanently located in this state.  
15 Covered claim does not include any amount due any reinsurer, insurer,  
16 insurance pool or underwriting association as subrogation recoveries or  
17 otherwise nor shall it include any obligations of the insolvent insurer  
18 arising out of any reinsurance contracts nor shall it include attorney fees  
19 or adjustment expenses incurred prior to the determination of insolvency.

20 4. "Fund" means the Arizona property and casualty insurance guaranty  
21 fund.

22 5. "Insolvent insurer" means an insurer THAT IS licensed to transact  
23 insurance in this state either at the time the policy was issued or when the  
24 insured event occurred and against whom an order of liquidation with a  
25 finding of insolvency has been entered after ~~the effective date of this~~  
26 ~~amendment to this section~~ SEPTEMBER 19, 2007 by a court of competent  
27 jurisdiction in the insurer's state of domicile or by this state pursuant to  
28 section 20-623, and the order of liquidation has not been stayed or been the  
29 subject of a writ of supersedeas or other comparable order. FOR PURPOSES OF  
30 THE WORKERS' COMPENSATION INSURANCE ACCOUNT, AN "INSOLVENT INSURER" SHALL  
31 ALSO INCLUDE ANY INSOLVENT INSURER AGAINST WHICH AN ORDER OF LIQUIDATION WITH  
32 A FINDING OF INSOLVENCY HAS BEEN ENTERED ON, BEFORE OR AFTER THE EFFECTIVE  
33 DATE OF THIS SECTION.

34 6. "Member insurer" means any person who writes any kind of insurance,  
35 unless such writing is restricted solely to life, title, surety, disability,  
36 credit, mortgage guaranty, ~~workers' compensation~~ or ocean-marine insurance,  
37 including the exchange of reciprocal or inter-insurance contracts, and is  
38 licensed to transact insurance in this state.

39 7. "Net direct written premiums" means direct gross premiums written  
40 in this state on insurance policies to which this article applies, less  
41 return premiums and dividends paid or credited to policyholders on such  
42 direct business. Net direct written premiums do not include premiums on  
43 contracts between insurers or reinsurers.

1           Sec. 2. Section 20-662, Arizona Revised Statutes, is amended to read:  
2           20-662. Insurance guaranty fund

3           A. ~~There is established an~~ THE Arizona property and casualty insurance  
4 guaranty fund IS ESTABLISHED within the department of insurance. The fund  
5 shall be deposited in a depository designated by the director and shall  
6 exercise its powers through a board established pursuant to section 20-663.

7           B. For the purpose of assessment, the fund shall be divided into ~~two~~  
8 THREE separate accounts:

9           1. The automobile insurance account.

10           2. THE WORKERS' COMPENSATION INSURANCE ACCOUNT.

11           ~~2-~~ 3. The account for all other insurance to which this article  
12 applies.

13           C. All costs, expenses and liabilities of the fund shall be paid by  
14 the fund and shall not be a general obligation of the state.

15           D. All monies placed in the accounts of the fund may be expended ONLY  
16 for the purposes of this article AND ONLY FOR THE PURPOSES OF THE ACCOUNT  
17 INTO WHICH THE MONIES WERE PLACED. NO MONIES PLACED IN ONE OF THE THREE  
18 SEPARATE ACCOUNTS ESTABLISHED BY THIS SECTION MAY BE USED DIRECTLY OR  
19 INDIRECTLY FOR ANY OTHER PURPOSE, INCLUDING TO SATISFY AN OBLIGATION  
20 ATTRIBUTABLE TO ANOTHER ACCOUNT.

21           Sec. 3. Section 20-663, Arizona Revised Statutes, is amended to read:  
22           20-663. Guaranty fund board; composition; compensation

23           A. ~~There~~ THE GUARANTY FUND BOARD is established within the department  
24 of insurance ~~a guaranty fund board~~ consisting of eleven members who are  
25 appointed by the governor. Membership on the board shall be for a term of  
26 three years.

27           B. The members of the board shall be appointed from a list of persons  
28 submitted to the governor by the director of insurance and shall be  
29 representative of a cross section of the industry ~~who are~~ THAT IS authorized  
30 to transact property or casualty insurance within this state. The board  
31 shall be composed of:

32           1. Nine members, each representing a different insurer that is  
33 authorized to transact property or casualty insurance business in this state,  
34 INCLUDING AT LEAST ONE MEMBER WHO REPRESENTS A WORKERS' COMPENSATION INSURER  
35 THAT HAS BEEN AUTHORIZED TO TRANSACT WORKERS' COMPENSATION INSURANCE BUSINESS  
36 IN THIS STATE FOR AT LEAST TEN CONSECUTIVE YEARS.

37           2. One member ~~shall be~~ WHO IS a casualty insurance producer residing  
38 in this state.

39           3. One member ~~representing~~ WHO REPRESENTS the general public.

40           C. The board shall conduct periodic meetings in Phoenix. Meetings  
41 shall be held on the call of the director or on the written request of any  
42 two members of the board.

43           D. Subject to the powers of the director, the board shall administer,  
44 operate and manage the fund pursuant to this article. The board shall advise  
45 and counsel with the director on matters relating to the solvency of  
46 insurers.

1 E. Members of the board shall receive no compensation and shall not be  
2 entitled to travel expenses as authorized by title 38, chapter 4, article 2,  
3 but shall be entitled to be reimbursed for expenses incurred by them as  
4 members of the board from the assets of the fund.

5 Sec. 4. Section 20-664, Arizona Revised Statutes, is amended to read:  
6 20-664. Powers and duties of the board

7 A. The board shall:

8 1. Investigate claims brought against the fund and adjust, compromise,  
9 settle and pay covered claims to the extent of the fund's obligation and deny  
10 all other claims. IN REGARD TO WORKERS' COMPENSATION CLAIMS, THE BOARD SHALL  
11 ADJUST, COMPROMISE, SETTLE AND PAY COMPENSABLE CLAIMS, AND DENY ALL OTHER  
12 CLAIMS, SUBJECT TO THE REGULATORY AND ADJUDICATORY AUTHORITY OF THE  
13 INDUSTRIAL COMMISSION OVER WORKERS' COMPENSATION CLAIMS PURSUANT TO TITLE 23,  
14 CHAPTER 6.

15 2. Within six months after the determination of insolvency or six  
16 months after the fund discovers or should have discovered the settlement of a  
17 covered claim, whichever is later, deny and state the basis for the denial or  
18 pay any covered claim that was settled within four months before the  
19 determination of insolvency of the insolvent insurer. THIS PARAGRAPH DOES  
20 NOT APPLY TO A SETTLEMENT OF A WORKERS' COMPENSATION CLAIM OR COMMUTATION OF  
21 PERMANENT DISABILITY BENEFITS APPROVED BY THE INDUSTRIAL COMMISSION UNLESS  
22 THE INDUSTRIAL COMMISSION AWARD APPROVING THE SETTLEMENT OR COMMUTATION OF  
23 BENEFITS HAS NOT BECOME FINAL.

24 3. Allocate claims paid and expenses incurred among the ~~two~~ THREE  
25 accounts of the fund separately.

26 4. Assess member insurers separately for each account of the fund AND  
27 EXPEND AMOUNTS ASSESSED ONLY FOR THE PURPOSES OF THE ACCOUNT INTO WHICH THE  
28 AMOUNTS ASSESSED WERE PLACED.

29 5. Notify such persons as the director directs pursuant to section  
30 20-668, subsection B, paragraph 1.

31 6. Handle claims through its employees or through one or more insurers  
32 or other persons designated as servicing facilities. Designation of a  
33 servicing facility shall be subject to the approval of the director.  
34 Designation may be declined by a member insurer.

35 7. Reimburse each servicing facility for obligations of the fund paid  
36 by the facility and for expenses incurred by the facility while handling the  
37 claims on behalf of the fund and pay the other expenses of the fund  
38 authorized pursuant to this article.

39 B. The board may:

40 1. Appear in, defend and appeal any action on a claim that is brought  
41 against the fund.

42 2. Employ or retain such persons as are necessary to handle claims and  
43 perform other duties of the fund.

44 3. Borrow funds necessary to carry out the intent of this article  
45 pursuant to the plan of operation.

46 4. Sue and be sued.

1           5. Negotiate and become a party to such contracts as are necessary to  
2 carry out the intent of this article.

3           6. Perform such other acts as are necessary or proper to carry out the  
4 intent of this article.

5           Sec. 5. Section 20-666, Arizona Revised Statutes, is amended to read:  
6 20-666. Assessments; notification; exemptions; setoffs; refunds

7           A. The board shall assess each member insurer, as a condition of such  
8 insurer's authority to transact insurance in this state, in such amounts as  
9 are necessary to pay the obligations of the fund pursuant to section 20-667  
10 subsequent to an insolvency, the expenses of handling covered claims  
11 subsequent to an insolvency, the cost of examinations and other expenses  
12 authorized pursuant to this article.

13           B. The assessment of each member insurer shall be in the proportion  
14 that the net direct written premiums of the member insurer for the preceding  
15 calendar year on the kinds of insurance in the account bears to the net  
16 direct written premiums of all member insurers for the preceding calendar  
17 year on the kinds of insurance in the account. The board shall notify each  
18 member insurer of the assessment not later than thirty days before it is due.  
19 No member insurer may be assessed in any year on any account an amount  
20 greater than one per cent of such member insurer's net direct written  
21 premiums for the preceding calendar year on the kinds of insurance in the  
22 account.

23           C. EXCEPT FOR THE WORKERS' COMPENSATION INSURANCE ACCOUNT, if the  
24 maximum assessment, together with the other assets of the fund in any  
25 account, does not provide in any one year in any account an amount sufficient  
26 to make all necessary payments from such account, the funds available may be  
27 prorated and the unpaid portion shall be paid as soon as funds become  
28 available. The board shall pay claims in any order which it may deem  
29 reasonable, including the payment of claims as such claims are received from  
30 the claimants or in groups or categories of claims.

31           D. The board may exempt or defer, in whole or in part, the assessment  
32 of any member insurer, if the assessment would cause the member insurer's  
33 financial statement to reflect amounts of capital or surplus less than the  
34 minimum amounts required for a certificate of authority by any jurisdiction  
35 in which the member insurer is authorized to transact insurance.

36           E. Each member insurer serving as a servicing facility may set off  
37 against any assessment, authorized payments made on covered claims and  
38 expenses incurred in the payment of such claims by the member insurer if they  
39 are chargeable to the account for which the assessment is made.

40           F. In addition to all other assessments, the board may assess each  
41 member insurer in an amount not to exceed two hundred dollars per year for  
42 the purpose of paying for operating expenses of the board and employees of  
43 the board.

44           G. If, at the end of any calendar year, the board finds that the  
45 assets of the fund in any account exceed the liabilities of such account as  
46 estimated by the board for the coming year, the board may refund to the

1 member insurers in proportion to the contribution of each member insurer to  
2 such account the amount by which the assets of the account exceed the  
3 liabilities. All refunds will be contingent upon the return of a member  
4 insurer's certificate(s) of contribution and will be in an amount equal to  
5 the premium tax offset value of the relinquished certificate.

6 Sec. 6. Section 20-667, Arizona Revised Statutes, is amended to read:  
7 20-667. Obligations of the fund

8 A. The fund is obligated solely to the extent of the covered claims  
9 existing during any of the following periods:

10 1. Before the determination of insolvency and arising within thirty  
11 days after the determination of insolvency.

12 2. Before the policy expiration date if less than thirty days after  
13 the determination of insolvency.

14 3. Before the insured replaces the policy or on request effects  
15 cancellation, if the insured does so within thirty days of the determination  
16 of insolvency.

17 B. EXCEPT FOR OBLIGATIONS ARISING OUT OF A COVERED WORKERS'  
18 COMPENSATION CLAIM FOR BENEFITS UNDER TITLE 23, CHAPTER 6, such obligation  
19 shall include only that amount of each covered claim that is more than one  
20 hundred dollars and that is less than three hundred thousand dollars or an  
21 amount of more than twenty-five dollars but not exceeding ten thousand  
22 dollars for a covered claim for the return of unearned premiums. In no event  
23 shall the fund be obligated to a policyholder or claimant in any amount in  
24 excess of the face amount of the policy from which the claim arises.

25 C. The fund is deemed the insurer to the extent of its obligation on  
26 the covered claims and to such extent shall have all rights, duties and  
27 obligations of the insolvent insurer as if the insurer had not become  
28 insolvent. Notwithstanding any other law, the fund is not obligated to pay  
29 any amount that does not constitute a payment of a covered claim, including  
30 taxable costs, attorney fees or interest that could be awarded or any  
31 additional liabilities or obligations that might otherwise exist or accrue  
32 against the insolvent insurer if the insurer had not become insolvent.

33 D. Any settlement of a covered claim that is entered into with any  
34 insured or claimant within four months before the determination of insolvency  
35 and that has not been paid is voidable by the fund for six months after the  
36 determination of the insolvency or six months after the fund discovers or  
37 should have discovered the settlement, whichever is later.

38 E. NOTWITHSTANDING SUBSECTION D OF THIS SECTION, A SETTLEMENT OR  
39 COMMUTATION OF A WORKERS' COMPENSATION CLAIM APPROVED BY AN AWARD OF THE  
40 INDUSTRIAL COMMISSION THAT HAS BECOME FINAL PURSUANT TO SECTION 23-942 OR  
41 23-943 IS NOT VOIDABLE.

42 ~~E.~~ F. The fund is not bound by any settlement that is more than the  
43 fund's limits of liability established by this article.

44 G. BEGINNING ON THE EFFECTIVE DATE OF THIS AMENDMENT TO THIS SECTION,  
45 THE FUND SHALL ASSUME ALL CONTRACTUAL RIGHTS AND OBLIGATIONS OF THE  
46 INDUSTRIAL COMMISSION REGARDING THE ADMINISTRATION OF WORKERS' COMPENSATION

1 INSOLVENT CARRIER CLAIMS IF THE INDUSTRIAL COMMISSION HAS CONTRACTED WITH A  
2 THIRD-PARTY PROCESSOR TO ADMINISTER CLAIMS.

3 Sec. 7. Section 20-673, Arizona Revised Statutes, is amended to read:

4 20-673. Nonduplication of recovery; exhausting all other  
5 applicable coverages; rights of fund and member  
6 insurer; definition

7 A. Any person having a claim against an insurer under any provision in  
8 an insurance policy that is also a covered claim shall be required to exhaust  
9 first all rights under ~~such~~ THAT policy. Any amount payable on a covered  
10 claim pursuant to this article shall be reduced by the amount of ~~such~~ THE  
11 recovery under the claimant's insurance policy. Any recovery pursuant to  
12 this article shall be reduced by the amount of the recovery under the  
13 claimant's insurance policy. A member insurer or other insurer, which pays  
14 ~~such~~ THE insurer's own policy, shall have no right of subrogation or recovery  
15 against the insured of an insolvent insurer. A CLAIMANT FOR WORKERS'  
16 COMPENSATION BENEFITS SHALL HAVE ALL RIGHTS AND OBLIGATIONS CONFERRED UNDER  
17 TITLE 23, CHAPTER 6.

18 B. Any person having a claim that may be recovered under more than one  
19 insurance guaranty fund or its equivalent or who is insured under more than  
20 one policy shall first exhaust coverage from the fund of the place of  
21 residence of the insured or, if it is a first-party claim for damage to  
22 property with a permanent location, shall first exhaust coverage from the  
23 fund of the location of the property, or shall first exhaust coverage under  
24 ~~such~~ THE other policy, AND IF IT IS A WORKERS' COMPENSATION CLAIM, RECOVERY  
25 SHALL BE SOUGHT FROM THE GUARANTY FUND OR ITS EQUIVALENT OF THE PLACE OF  
26 RESIDENCE OF THE CLAIMANT. Any recovery pursuant to this article shall be  
27 reduced by the amount of the recovery from any other insurance guaranty fund  
28 or its equivalent or under another policy. Covered claims by subscribers of  
29 an insolvent reciprocal insurer shall not be paid until all subscribers have  
30 been assessed pursuant to section 20-791.

31 C. Where more than one policy may be applicable, a policy issued by  
32 the insolvent insurer shall be deemed to be excess coverage. The claimant  
33 shall be required to exhaust all rights under other applicable coverage or  
34 coverages. Any recovery pursuant to this article shall be reduced by the  
35 amount of the recovery under the claimant's insurance policy. Any amount  
36 payable on a covered claim shall be reduced by the amount of ~~such~~ THE  
37 recovery under other applicable insurance.

38 D. EXCEPT FOR WORKERS' COMPENSATION CLAIMANTS, if damages against  
39 uninsured motorists are recoverable by the claimant from ~~such~~ THE claimant's  
40 own insurer, ~~such~~ THE recoverable damages shall reduce the amount of any  
41 recovery pursuant to this article if the full amount of ~~such~~ THE uninsured  
42 motorist coverage has been exhausted. ~~Such~~ THE claimant shall have no claim  
43 against the insured of the insolvent carrier or the fund if the full amount  
44 of uninsured motorist coverage was not recovered by ~~such~~ THE claimant. A  
45 member insurer shall have no right of subrogation against the insured of the  
46 insolvent carrier or against the fund for any amount paid by ~~such~~ THE insurer

1 under uninsured motorist coverage. A member insurer may file a claim for  
2 ~~such~~ subrogation payments under uninsured motorist coverage against the  
3 ancillary or domiciliary receiver of the insolvent insurer.

4 E. The fund shall receive the proceeds of any amounts recoverable on  
5 reinsurance contracts or treaties entered into by the insolvent insurer that  
6 cover any of the liabilities incurred by the insolvent insurer in the  
7 category or categories involved. ~~Such~~ THE proceeds shall be limited to  
8 payments ~~upon~~ ON or loss adjustment expenses or defense costs actually  
9 incurred by the fund on account of claims covered in ~~such~~ THE contracts or  
10 treaties. The director, as receiver or ancillary receiver, shall receive the  
11 proceeds of any reinsurance recoverable to the extent of payment on claims,  
12 loss adjustment expenses or defense costs made ~~prior to~~ BEFORE the order of  
13 liquidation.

14 F. If a covered claim arises out of two or more policies to which this  
15 article applies, a recovery under one policy reduces the amount that is  
16 payable under the other policy. The fund is not liable for the payment of  
17 more than one policy on a covered claim.

18 G. For the purposes of this article, "exhaustion of all rights under  
19 any other policy of insurance" means the payment of the applicable policy  
20 limits or an adjudication by a court of record that no benefits are owed.

21 Sec. 8. Section 20-674, Arizona Revised Statutes, is amended to read:  
22 20-674. Premium tax offset

23 A. The fund shall issue to each insurer paying an assessment pursuant  
24 to this article a certificate of contribution, in a form prescribed by the  
25 director for the amount paid. All outstanding certificates shall be of equal  
26 priority without reference to amounts or dates of issue.

27 B. ~~EXCEPT FOR PREMIUM TAXES AND ASSESSMENTS COLLECTED PURSUANT TO~~  
28 ~~TITLE 23, CHAPTER 6~~, a certificate of contribution issued to a member insurer  
29 may be offset against ~~such~~ THE insurer's premium tax liability to this state  
30 in the amount of twenty per cent of the assessment for the year of assessment  
31 and twenty per cent of the assessment per year for each of the succeeding  
32 four years. A member shall at its option have the right to show a  
33 certificate of contribution as an asset in the form approved by the director  
34 at percentages of the original face amount approved by the director, for  
35 calendar years as follows:

- 36 1. One hundred per cent for the calendar year of issuance.
- 37 2. Eighty per cent for the first calendar year after the year of  
38 issuance.
- 39 3. Sixty per cent for the second calendar year after the year of  
40 issuance.
- 41 4. Forty per cent for the third calendar year after the year of  
42 issuance.
- 43 5. Twenty per cent for the fourth calendar year after the year of  
44 issuance.

45 C. Any sums available for refund, pursuant to section 20-666, from the  
46 fund ~~which~~ THAT have been written off by contributing insurers and offset

1 against premium taxes shall be paid to the director and shall be deposited,  
2 pursuant to sections 35-146 and 35-147, in the state general fund.

3 D. Notwithstanding subsection B of this section, the total amount a  
4 member insurer, as defined in section 20-661, may offset against its premium  
5 tax liability pursuant to a certificate of contribution that is issued from  
6 1987 through 1994 shall not exceed the following percentage amounts for each  
7 certificate of contribution, except that in no event may the total amount of  
8 the offset exceed one hundred per cent of each assessment:

9 1. For 1992, thirteen per cent.

10 2. For 1993, eleven per cent.

11 3. For 1994, thirteen per cent.

12 E. No insurer may offset its premium tax liability by any amount  
13 unless the assessment for which the first year credit is claimed was  
14 collected by the guaranty fund in the calendar year for which the insurer  
15 seeks to offset its taxes.

16 F. Beginning in 1995, the total amount that a member insurer may  
17 offset against its premium tax liability pursuant to a certificate of  
18 contribution shall be as provided in subsection B of this section, except  
19 that in no event may the total amount of the offset exceed one hundred per  
20 cent of the assessment.

21 Sec. 9. Section 20-676, Arizona Revised Statutes, is amended to read:

22 20-676. Stay of proceedings

23 A. All proceedings in which the insolvent insurer or the insolvent  
24 insurer's insured is a party in any court of this state shall be stayed for  
25 six months from the date the insolvency is determined or an ancillary  
26 proceeding is instituted in this state, whichever is later, to permit proper  
27 defense by the fund of all pending causes of action as to any covered claim.  
28 At the request of any party and on a showing of good cause, the court may  
29 shorten or lengthen the stay prescribed in this section. **THIS SUBSECTION  
30 DOES NOT APPLY TO PROCEEDINGS IN WHICH THE INSOLVENT INSURER IS A PARTY TO A  
31 PROCEEDING BEFORE THE INDUSTRIAL COMMISSION REGARDING AN EMPLOYEE'S  
32 ENTITLEMENT TO BENEFITS UNDER TITLE 23, CHAPTER 6, EXCEPT THAT, ON A SHOWING  
33 OF GOOD CAUSE, THE INDUSTRIAL COMMISSION SHALL GRANT UP TO A NINETY-DAY  
34 CONTINUANCE OF ANY SCHEDULED HEARING TO ALLOW THE FUND TO ASSUME THE DEFENSE  
35 AND INVESTIGATE THE CLAIM.**

36 B. On application of the fund, either on the fund's own behalf or on  
37 the insured's behalf, the court may set aside any judgment, order, decision,  
38 verdict, finding or award arising from the default of the insolvent insurer  
39 or the insurer's failure to defend the insured and the fund shall be  
40 permitted to defend the claim on the merits.

41 Sec. 10. Repeal

42 Section 20-679, Arizona Revised Statutes, is repealed.

43 Sec. 11. Title 20, chapter 3, article 6, Arizona Revised Statutes, is  
44 amended by adding a new section 20-679, to read:

45 20-679. Limitations on filing of creditor's claims

1 A. NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE, A COVERED  
2 CLAIM SHALL NOT INCLUDE A CLAIM FILED WITH THE FUND AFTER THE EARLIER OF:  
3 1. EIGHTEEN MONTHS AFTER THE DATE OF THE ORDER OF LIQUIDATION.  
4 2. THE FINAL DATE SET BY THE COURT FOR THE FILING OF CLAIMS AGAINST  
5 THE LIQUIDATOR OR RECEIVER OF AN INSOLVENT INSURER.

6 B. NOTWITHSTANDING SUBSECTION A OF THIS SECTION, A COVERED CLAIM FOR  
7 WORKERS' COMPENSATION SHALL INCLUDE CLAIMS FILED THAT MEET THE REQUIREMENTS  
8 OF SECTION 20-667, SUBSECTION A AND THE STATUTORY FILING REQUIREMENTS OF  
9 SECTION 23-1061.

10 Sec. 12. Section 20-680, Arizona Revised Statutes, is amended to read:

11 20-680. Exempt types of insurance

12 A. This article applies to all kinds of insurance except:

- 13 1. Life.
- 14 2. Title.
- 15 3. Surety.
- 16 4. Disability.
- 17 5. Credit.
- 18 6. Mortgage guarantee.
- 19 ~~7. Workers' compensation.~~
- 20 ~~8.~~ 7. Ocean marine insurance.

21 ~~9.~~ 8. Insurance of warranties or service contracts, including  
22 insurance that provides for the repair, replacement or service of goods or  
23 property, or indemnification for repair, replacement or service, for the  
24 operational or structural failure of the goods or property due to a defect in  
25 materials, workmanship or normal wear and tear, or reimbursement for the  
26 liability incurred by the issuer of agreements or service contracts that  
27 provide these benefits.

28 ~~10.~~ 9. Any kind of surplus lines insurance.

29 ~~11.~~ 10. Any policy of insurance issued to an industrial insured  
30 pursuant to section 20-400.10.

31 ~~12.~~ 11. Any new types of coverages approved or permitted after August  
32 27, 1977.

33 B. The exemptions prescribed in this section do not restrict any of  
34 the fund's rights or defenses permitted under this article, including the  
35 application of any credit or offset prescribed in section 20-673 for payments  
36 made under any policy of insurance, including any policy of insurance that is  
37 exempt from this article.

38 Sec. 13. Section 23-902, Arizona Revised Statutes, is amended to read:

39 23-902. Employers subject to chapter; exceptions

40 A. Employers subject to this chapter are the state, each county, city,  
41 town, municipal corporation and school district and every person who employs  
42 any workers or operatives regularly employed in the same business or  
43 establishment under contract of hire, including covered employees pursuant to  
44 a professional employer agreement, except domestic servants. Exempted  
45 employers of domestic servants may come under this chapter by complying with  
46 its provisions and the rules of the commission. For the purposes of this

1 subsection, "regularly employed" includes all employments, whether continuous  
2 throughout the year, or for only a portion of the year, in the usual trade,  
3 business, profession or occupation of an employer.

4 B. When an employer procures work to be done for the employer by a  
5 contractor over whose work the employer retains supervision or control, and  
6 the work is a part or process in the trade or business of the employer, then  
7 the contractors and the contractor's employees, and any subcontractor and the  
8 subcontractor's employees, are, within the meaning of this section, employees  
9 of the original employer. For the purposes of this subsection, "part or  
10 process in the trade or business of the employer" means a particular work  
11 activity that in the context of an ongoing and integral business process is  
12 regular, ordinary or routine in the operation of the business or is routinely  
13 done through the business' own employees.

14 C. A person engaged in work for a business, and who while so engaged  
15 is independent of that business in the execution of the work and not subject  
16 to the rule or control of the business for which the work is done, but is  
17 engaged only in the performance of a definite job or piece of work, and is  
18 subordinate to that business only in effecting a result in accordance with  
19 that business design, is an independent contractor.

20 D. A business that uses the services of an independent contractor and  
21 the independent contractor may prove the existence of an independent  
22 contractor relationship by executing a written agreement that complies with  
23 this subsection. The written agreement shall evidence that the business does  
24 not have the authority to supervise or control the actual work of the  
25 independent contractor or the independent contractor's employees. A written  
26 agreement executed in compliance with this subsection creates a rebuttable  
27 presumption of an independent contractor relationship between the parties if  
28 the written agreement contains a disclosure statement that the independent  
29 contractor is not entitled to workers' compensation benefits from the  
30 business. Unless the rebuttable presumption is overcome, no premium may be  
31 collected by the carrier on payments by the business to the independent  
32 contractor if a fully completed written agreement that satisfies the  
33 requirements of this subsection is submitted to the carrier. The written  
34 agreement shall be dated and contain the signatures of both parties and,  
35 unless otherwise provided by law, shall state that the business:

36 1. Does not require the independent contractor to perform work  
37 exclusively for the business. This paragraph shall not be construed as  
38 conclusive evidence that an individual who performs services primarily or  
39 exclusively for another person is an employee of that person.

40 2. Does not provide the independent contractor with any business  
41 registrations or licenses required to perform the specific services set forth  
42 in the contract.

43 3. Does not pay the independent contractor a salary or hourly rate  
44 instead of an amount fixed by contract.

1           4. Will not terminate the independent contractor before the expiration  
2 of the contract period, unless the independent contractor breaches the  
3 contract or violates the laws of this state.

4           5. Does not provide tools to the independent contractor.

5           6. Does not dictate the time of performance.

6           7. Pays the independent contractor in the name appearing on the  
7 written agreement.

8           8. Will not combine business operations with the person performing the  
9 services rather than maintaining these operations separately.

10          E. A business that uses the services of a sole proprietor who has  
11 waived the sole proprietor's rights to workers' compensation coverage and  
12 benefits pursuant to section 23-961, subsection ~~P~~ M is not liable for  
13 workers' compensation coverage or the payment of premiums for the sole  
14 proprietor.

15          F. The written agreement executed in compliance with subsection D of  
16 this section shall be null and void and create no presumption of an  
17 independent contractor relationship if the consent of either party is either:

18           1. Obtained through misrepresentation, false statements, fraud or  
19 intimidation.

20           2. Obtained through coercion or duress.

21          G. If any agreement is found to be null and void under subsection F of  
22 this section the insurance carrier is entitled to collect a premium.

23          Sec. 14. Section 23-961, Arizona Revised Statutes, is amended to read:

24           23-961. Methods of securing compensation by employers; deficit  
25   premium; civil penalty

26          A. Employers shall secure workers' compensation to their employees in  
27 one of the following ways:

28           1. By insuring and keeping insured the payment of such compensation  
29 with an insurance carrier authorized by the director of insurance to write  
30 workers' compensation insurance in this state.

31           2. By furnishing to the commission satisfactory proof of financial  
32 ability to pay the compensation directly or through a workers' compensation  
33 pool approved by the commission in the amount and manner and when due as  
34 provided in this chapter. The requirements of this paragraph may be  
35 satisfied by furnishing to the commission satisfactory proof that the  
36 employer is a member of a workers' compensation pool approved by the  
37 commission pursuant to section 23-961.01. The commission may require a  
38 deposit or any other security from the employer for the payment of  
39 compensation liabilities in an amount fixed by the commission, but not less  
40 than one hundred thousand dollars for workers' compensation liabilities. If  
41 the employer does not fully comply with the provisions of this chapter  
42 relating to the payment of compensation, the commission may revoke the  
43 authority of the employer to pay compensation directly.

44          B. An employer may not secure compensation to comply with this chapter  
45 by any mechanism other than as provided in this section. No insurance,  
46 combination or other program may be marketed, offered or sold as workers'

1 compensation that does not comply with this section. An employer violates  
2 this chapter if the employer purchases or secures its obligations under this  
3 chapter through a substitute for workers' compensation that does not comply  
4 with this section.

5 C. Insurance carriers that transact the business of workers'  
6 compensation insurance in this state ~~shall be~~ ARE subject to the rules of the  
7 director of insurance.

8 ~~D. The director of insurance shall not issue to an insurance carrier a~~  
9 ~~certificate of authority that authorizes the insurance carrier to transact~~  
10 ~~workers' compensation insurance until the insurer deposits with the state~~  
11 ~~treasurer, through the director of insurance, cash or securities. The amount~~  
12 ~~of cash or securities required under this subsection shall be at least equal~~  
13 ~~to the greater of the following amounts:~~

14 ~~1. One hundred thousand dollars.~~

15 ~~2. The sum of subdivisions (a) and (b) of this paragraph less credits~~  
16 ~~for approved reinsurance computed as of the preceding December 31 or other~~  
17 ~~time as requested by the department of insurance for workers' compensation~~  
18 ~~insurance written subject to the laws of this state:~~

19 ~~(a) The aggregate of the present values at six per cent interest of~~  
20 ~~all determined and estimated future direct reported loss and loss expense~~  
21 ~~payments on compensation claims incurred more than three years immediately~~  
22 ~~before the preceding December 31 or other time as requested by the department~~  
23 ~~of insurance.~~

24 ~~(b) The aggregate of the amounts determined for each of the three~~  
25 ~~years immediately before the preceding December 31 or other time as requested~~  
26 ~~by the department of insurance that equals the greater of the following:~~

27 ~~(i) Sixty five per cent of the earned premiums for the year less all~~  
28 ~~direct reported loss and loss expense payments made on compensation claims~~  
29 ~~incurred in the corresponding year.~~

30 ~~(ii) The present value at six per cent interest of all determined and~~  
31 ~~estimated future direct reported loss and loss expense payments on~~  
32 ~~compensation claims incurred in that year.~~

33 ~~E. On or before April 15 and on any date that the department of~~  
34 ~~insurance specifically requests, an insurance carrier shall file with the~~  
35 ~~department of insurance the information necessary to compute the required~~  
36 ~~amount to be deposited pursuant to subsection D of this section and shall~~  
37 ~~deposit any required additional amount.~~

38 ~~F. An insurance carrier shall maintain at all times a deposit of cash~~  
39 ~~or securities with the state treasurer, through the director of insurance, in~~  
40 ~~an amount that is not less than the amount required under this section.~~

41 ~~G. Cash or securities deposited pursuant to this section are subject~~  
42 ~~to approval by the director of insurance at all times. The director of~~  
43 ~~insurance shall hold the cash or securities for fulfillment of the~~  
44 ~~obligations of the insurance carrier, including an insurance carrier acting~~  
45 ~~as a reinsurer, under this chapter. The commission shall have a lien against~~

1 ~~the cash or securities deposited to the extent the special fund is liable to~~  
2 ~~pay the obligations secured by the cash or securities.~~

3 D. ON APPLICATION OF AN INSURANCE CARRIER, THE DIRECTOR OF INSURANCE  
4 MAY ORDER THE RELEASE TO THE INSURANCE CARRIER OF ALL OR PART OF THE CASH OR  
5 SECURITIES THAT THE INSURANCE CARRIER DEPOSITED BEFORE THE EFFECTIVE DATE OF  
6 THIS AMENDMENT TO THIS SECTION WITH THE STATE TREASURER PURSUANT TO THIS  
7 SECTION. IN DETERMINING WHETHER TO ORDER THE RELEASE OF ALL OR PART OF THE  
8 DEPOSIT, THE DIRECTOR OF INSURANCE SHALL CONSIDER ALL OF THE FOLLOWING:

9 1. THE FINANCIAL CONDITION OF THE INSURANCE CARRIER.

10 2. THE INSURANCE CARRIER'S LIABILITIES FOR WORKERS' COMPENSATION LOSS  
11 AND LOSS EXPENSES IN THIS STATE.

12 3. WHETHER THE INSURANCE CARRIER IS SUBJECT TO A FINDING OF HAZARDOUS  
13 CONDITION, AN ORDER OF SUPERVISION, A DELINQUENCY PROCEEDING OR ANY OTHER  
14 REGULATORY ACTION IN THIS STATE, THE INSURANCE CARRIER'S STATE OF DOMICILE OR  
15 ANY OTHER STATE IN WHICH THE INSURANCE CARRIER TRANSACTED THE BUSINESS OF  
16 INSURANCE.

17 4. ANY OTHER FACTORS THE DIRECTOR OF INSURANCE DETERMINES ARE RELEVANT  
18 TO THE APPLICATION FOR RELEASE OF THE DEPOSIT.

19 ~~H.~~ E. Except in the event of nonpayment of premiums, each insurance  
20 carrier shall carry a risk to the conclusion of the policy period unless the  
21 policy is cancelled by the employer or unless one or both of the parties to a  
22 professional employer agreement terminate the agreement. The policy period  
23 shall be agreed upon by the insurance carrier and the employer.

24 ~~I.~~ F. At least thirty days' notice shall be given by the insurance  
25 carrier to the employer and to the commission of any cancellation or  
26 nonrenewal of a policy if the cancellation or nonrenewal is at the election  
27 of the insurance carrier. The insurance carrier shall promptly notify the  
28 commission of any cancellation by the employer or failure of the employer to  
29 renew the policy. The failure to give notice of nonrenewal if the nonrenewal  
30 is at the election of the insurance carrier shall not extend coverage beyond  
31 the policy period. An insurance carrier shall notify the commission on a  
32 form prescribed by the commission that it has insured an employer for  
33 workers' compensation promptly after undertaking to insure the employer.

34 ~~J.~~ G. Every insurance carrier on or before March 1 of each year shall  
35 pay to the state treasurer for the credit of the administrative fund, in lieu  
36 of all other taxes on workers' compensation insurance, a tax of not more than  
37 three per cent on all premiums collected or contracted for during the year  
38 ending December 31 next preceding, less the deductions from such total direct  
39 premiums for applicable cancellations, returned premiums and all policy  
40 dividends or refunds paid or credited to policyholders within this state and  
41 not reapplied as premiums for new, additional or extended insurance. Every  
42 self-insured employer, including workers' compensation pools, on or before  
43 March 31 of each year shall pay a tax of not more than three per cent of the  
44 premiums that would have been paid by the employer if the employer had been  
45 fully insured by an insurance carrier authorized to transact workers'  
46 compensation insurance in this state during the preceding calendar year. The

1 commission shall adopt rules that shall specify the premium plans and methods  
2 to be used for the calculation of rates and premiums and that shall be the  
3 basis for the taxes assessed to self-insured employers. The tax shall be not  
4 less than two hundred fifty dollars per annum and shall be computed and  
5 collected by the commission and paid to the state treasurer for the credit of  
6 the administrative fund at a rate not exceeding three per cent to be fixed  
7 annually by the industrial commission. The rate shall be no more than is  
8 necessary to cover the actual expenses of the industrial commission in  
9 carrying out its powers and duties under this title. Any quarterly payments  
10 of tax pursuant to subsection ~~I~~ of this section shall be deducted from the  
11 tax payable pursuant to this subsection.

12 ~~K~~ H. An insurance carrier may reduce the amount of premiums paid by  
13 an employer by up to five per cent if all of the following apply:

14 1. The insured employer complies with the drug testing policy  
15 requirements prescribed in section 23-493.04.

16 2. The insured employer conducts drug testing of prospective  
17 employees.

18 3. The insured employer conducts drug testing of an employee after the  
19 employee has been injured.

20 4. The insured employer allows the employer's insurance carrier to  
21 have access to the drug testing results under paragraphs 2 and 3 of this  
22 subsection.

23 ~~L~~ I. Any insurer that, pursuant to this section, paid or is required  
24 to pay a tax of two thousand dollars or more for the preceding calendar year  
25 shall file a quarterly report, in a form prescribed by the commission,  
26 accompanied by a payment in an amount equal to the tax due at the rates  
27 prescribed in subsection ~~J~~ G of this section for premiums determined  
28 pursuant to subsection ~~J~~ G of this section or an amount equal to twenty-five  
29 per cent of the tax paid or required to be paid pursuant to subsection ~~J~~ G  
30 of this section for the preceding calendar year. The quarterly payments  
31 shall be due and payable on or before the last day of the month following the  
32 close of the quarter and shall be made to the state treasurer.

33 ~~M~~ J. If an overpayment of taxes results from the method prescribed  
34 in subsection ~~L~~ I of this section the industrial commission may refund the  
35 overpayment without interest.

36 ~~N~~ K. An insurer who fails to pay the tax prescribed by subsection  
37 ~~J~~ G or ~~L~~ I of this section or the amount prescribed by section 23-1065,  
38 subsection A is subject to a civil penalty equal to the greater of  
39 twenty-five dollars or five per cent of the tax or amount due plus interest  
40 at the rate of one per cent per month from the date the tax or amount was  
41 due.

42 ~~O~~ L. An insurance carrier authorized to write workers' compensation  
43 insurance may not assess an employer premiums for services provided by a  
44 contractor alleged to be an employee under section 23-902, subsection B or C,  
45 unless the carrier has done both of the following:

1 1. Prepared written audit or field investigation findings establishing  
2 that all applicable factors for determining employment status under section  
3 23-902 have been met.

4 2. Provided a copy of such findings to the employer in advance of  
5 assessing a premium.

6 ~~P.~~ M. Notwithstanding section 23-901, paragraph 6, subdivision (i), a  
7 sole proprietor may waive the sole proprietor's rights to workers'  
8 compensation coverage and benefits if both the sole proprietor and the  
9 insurance carrier of the employer subject to this chapter for which the sole  
10 proprietor performs services sign and date a waiver that is substantially in  
11 the following form:

12 I am a sole proprietor, and I am doing business as  
13 (name of sole proprietor). I am performing work as an  
14 independent contractor for (name of employer). I am not the  
15 employee of (name of employer) for workers' compensation  
16 purposes, and, therefore, I am not entitled to workers'  
17 compensation benefits from (name of employer). I understand  
18 that if I have any employees working for me, I must maintain  
19 workers' compensation insurance on them.

20 \_\_\_\_\_  
21 Sole proprietor Date

22 \_\_\_\_\_  
23 Insurance carrier Date

24 Sec. 15. Section 23-966, Arizona Revised Statutes, is amended to read:  
25 23-966. Failure of employer to pay claim or comply with  
26 commission order; reimbursement of funds

27 A. If ~~an insurance carrier or~~ A self-insured employer or other  
28 employer authorized by the commission to process or pay claims directly  
29 pursuant to this chapter does not fully comply with the provisions of the  
30 workers' compensation law relating to the processing or payment of  
31 compensation, medical benefits or the final orders of the commission, the  
32 workers' compensation claims shall be assigned by the commission to the  
33 special fund established by section 23-1065. The special fund shall ensure  
34 that these claims are processed and that compensation, benefits or amounts  
35 due are paid. The special fund may use third-party processors or other  
36 legal, medical, claims or labor market personnel to assist in the processing  
37 and payment of claims assigned under this section.

38 B. In addition to expenditures authorized under subsection A of this  
39 section, the special fund may use monies for any expense or service that is  
40 necessary to ensure that claims assigned under subsection A of this section  
41 are processed and paid, necessary to assist in the determination of liability  
42 of a claim that is assigned under this section or necessary to assist in the  
43 collection of monies owed to the special fund under this section, including  
44 collection against the cash, securities, bond and other assets of the  
45 ~~insurance carrier or~~ employer. These expenses may include travel, discovery  
46 procedures and employing any third-party processor, expert, consultant or

1 professional, including an attorney, auditor, examiner or actuary. The  
2 special fund shall reimburse the administrative fund for all expenses  
3 incurred by the administrative fund related to the processing and payment of  
4 claims assigned under this section.

5 C. The special fund shall have a claim against the ~~insurance carrier~~  
6 ~~or~~ employer for all monies that are spent or anticipated to be spent under  
7 this section, including administrative costs, necessary expenses and attorney  
8 fees. Any claim by the special fund shall be made on the cash, securities or  
9 bond filed under section 23-961 or applicable rules or on any other asset of  
10 the ~~insurance carrier or~~ employer.

11 ~~D. The commission may increase the assessment established in section~~  
12 ~~23-1065 by not to exceed one-half of one per cent of such assessment in any~~  
13 ~~one year to reimburse the special fund for its loss incurred under this~~  
14 ~~section.~~

15 Sec. 16. Section 23-1065, Arizona Revised Statutes, is amended to  
16 read:

17 23-1065. Special fund; purposes; investment committee

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

32 B. In claims involving an employee who has a preexisting  
33 industrially-related permanent physical impairment of the type specified in  
34 section 23-1044, subsection B and who thereafter suffers an additional  
35 permanent physical impairment of the type specified in such subsection, the  
36 claim involving the subsequent impairment is eligible for reimbursement, as  
37 provided by subsection D of this section, according to the following:

38 1. The employer in whose employ the subsequent impairment occurred or  
39 its insurance carrier is solely responsible for all temporary disability  
40 compensation to which the employee is entitled and for an amount equal to the  
41 permanent disability compensation provided by section 23-1044, subsection B  
42 for the subsequent impairment. If the employee is determined to have  
43 sustained no loss of earning capacity after the medically stationary date,  
44 the employer or carrier shall pay him as a vocational rehabilitation bonus  
45 the amount calculated under this paragraph as a lump sum, which shall be a  
46 credit against any permanent compensation benefits awarded in any subsequent

1 proceeding. The amount of the vocational rehabilitation bonus for which the  
2 employer or carrier is responsible under this paragraph shall be calculated  
3 solely on physical, medically rated permanent impairment and not on  
4 occupational or other factors.

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

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

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

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

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

- 38 (a) Epilepsy.
- 39 (b) Diabetes.
- 40 (c) Cardiac disease.
- 41 (d) Arthritis.
- 42 (e) Amputated foot, leg, arm or hand.
- 43 (f) Loss of sight of one or both eyes or a partial loss of uncorrected  
44 vision of more than seventy-five per cent bilaterally.
- 45 (g) Residual disability from poliomyelitis.
- 46 (h) Cerebral palsy.

- 1 (i) Multiple sclerosis.
- 2 (j) Parkinson's disease.
- 3 (k) Cerebral vascular accident.
- 4 (l) Tuberculosis.
- 5 (m) Silicosis.
- 6 (n) Psychoneurotic disability following treatment in a recognized  
7 medical or mental institution.
- 8 (o) Hemophilia.
- 9 (p) Chronic osteomyelitis.
- 10 (q) Hyperinsulinism.
- 11 (r) Muscular dystrophies.
- 12 (s) Arteriosclerosis.
- 13 (t) Thrombophlebitis.
- 14 (u) Varicose veins.
- 15 (v) Heavy metal poisoning.
- 16 (w) Ionizing radiation injury.
- 17 (x) Compressed air sequelae.
- 18 (y) Ruptured intervertebral disk.

19 4. The employer or carrier and the special fund are equally  
20 responsible for the amount of compensation for loss of earning capacity under  
21 section 23-1044, subsection C or permanent total disability under section  
22 23-1045, subsection B.

23 D. The employer or insurance carrier shall notify the commission of  
24 its intent to claim reimbursement for an eligible claim under subsection B or  
25 C of this section not later than the time the employer or insurance carrier  
26 notifies the commission pursuant to section 23-1047, subsection A. Upon  
27 receiving notice the commission may expend funds from the special fund  
28 created by this section for travel and discovery procedures and for the  
29 employment of such independent legal, medical, rehabilitation, claims or  
30 labor market consultants or experts as may be deemed necessary by the  
31 commission to assist in the determination of the liability of the special  
32 fund, if any, under subsection B or C of this section. In the event there is  
33 any dispute regarding liability to the special fund pursuant to subsection B  
34 or C of this section, the commission shall not delay the issuance of a  
35 permanent award pursuant to section 23-1047, subsection B.

36 E. If the special fund created by this section is determined to be  
37 liable under either subsection B or C of this section, the employer or  
38 insurance carrier that is primarily liable shall pay the entire amount of the  
39 award to the injured employee and the commission shall by rule provide for  
40 the reimbursement of the employer or insurance carrier on an annual basis.  
41 In any case arising out of subsection B or C of this section, the written  
42 approval of the special fund is required for the compromise of any claim made  
43 pursuant to section 23-1023. In any such case, written approval shall not be  
44 unreasonably withheld by the special fund, carrier, self-insured employer or  
45 other person responsible for the payment of compensation. Failure to obtain  
46 the written approval of the special fund shall not cause the injured worker

1 to lose any benefits but ends the special fund's liability for reimbursement  
2 and makes the employer or carrier solely responsible for the payment of the  
3 remaining benefits.

4 F. The employer or insurance carrier shall make its claim for  
5 reimbursement to the commission no later than November 1 each year, for  
6 payments made pursuant to subsection B or C of this section during the twelve  
7 months prior to October 1 each year. Claims shall be paid before December 31  
8 each year. If the total annual reserved liabilities of the special fund  
9 obligated under subsections B and C of this section exceed six million  
10 dollars, as determined by the annual actuarial study performed pursuant to  
11 subsection I of this section, the commission, after notice and a hearing, may  
12 levy an additional assessment under subsection A of this section of up to  
13 one-half per cent to meet such liabilities. Any insurance carrier or  
14 employer who may be adversely affected by the additional assessment may at  
15 any time prior to the sixtieth day after such additional assessment is  
16 ordered file a complaint challenging the validity of the additional  
17 assessment in the superior court in Maricopa county for a judicial review of  
18 the additional assessment. On judicial review the determination of the  
19 commission shall be upheld if supported by substantial evidence in the record  
20 considered as a whole.

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

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

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

36 J. The special fund of the commission consists of all monies from  
37 premiums and assessments, except penalties assessed pursuant to this chapter,  
38 received and paid into the fund, property and securities acquired by the use  
39 of monies in the fund, interest earned on monies in the fund and other monies  
40 derived from the sale, use or lease of properties belonging to the fund. The  
41 special fund created by this section shall be administered by the director of  
42 the industrial commission, subject to the authority of the industrial  
43 commission. The director of the commission with approval of the investment  
44 committee, in the administration of the special fund, may provide loans,  
45 subject to repayment, budgetary review and legislative appropriation, to the  
46 administrative fund for the purposes and subject to section 23-1081, acquire

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

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

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

21 1. Compensation of fifty dollars for each day while in actual  
22 attendance at meetings of the investment committee.

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

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

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

28 O. The investment committee, by resolution, may invest and reinvest  
29 the surplus or reserves in the funds established under this chapter in any  
30 legal investments authorized under section ~~38-719~~ 38-718.

31 P. In addition to the investments authorized under section ~~38-719~~  
32 38-718, the investment committee may approve the investment in real property  
33 and improvements on real property to house and maintain offices of the  
34 commission, including spaces for its departmental and operational facilities.  
35 Title to the real estate and improvements on the real estate vests in the  
36 special fund of the commission, and the assets become part of the fund as  
37 provided by this section.

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

1 may sell any of the securities as the director deems appropriate, if  
2 authorized by resolution of the investment committee, and the proceeds  
3 therefrom shall be payable to the state treasurer for the account of the  
4 special fund upon delivery of the securities to the purchaser or the  
5 purchaser's agent.

6 Sec. 17. Section 23-1081, Arizona Revised Statutes, is amended to  
7 read:

8 23-1081. Administrative fund; purposes and administration

9 A. The administrative fund is established to provide for all expenses  
10 of the industrial commission in carrying out its powers and duties under this  
11 title. Except for monies from cash deposits or surety bonds in the separate  
12 account established by section 23-527, the administrative fund and  
13 expenditures therefrom shall be subject to budgetary review and legislative  
14 appropriation as expenditures from other state funds. Vouchers or claims  
15 prepared for any purpose other than for payment of benefits shall be  
16 processed as prescribed by section 35-181.01 and the rules of the director of  
17 the department of administration. The industrial commission shall annually  
18 fix the rate of the tax, not to exceed three per cent, to be paid to the  
19 state treasurer for credit to the administrative fund pursuant to section  
20 23-961, subsection ~~J~~ G in an amount that is no more than necessary to cover  
21 the actual expenses of the industrial commission in carrying out its powers  
22 and duties under this title. Monies for expenditure from the administrative  
23 fund shall be appropriated by the legislature. All money and securities in  
24 the fund shall be held in trust and invested by the treasurer.

25 B. The administrative fund shall be no less than self-supporting with  
26 respect to the expenses of the industrial commission and other expenditures  
27 from the administrative fund as provided under this chapter. Unless the  
28 special fund established by section 23-1065 is not on an actuarially sound  
29 basis as determined pursuant to section 23-1065, subsection I, any surplus or  
30 deficit in the revenue provided under section 23-961 above or below the  
31 expenses of the industrial commission and other expenditures from the  
32 administrative fund as provided under this chapter shall be included in the  
33 calculation of the rate to be fixed for the following year pursuant to  
34 section 23-961, subsection ~~J~~ G. If the special fund is not on an  
35 actuarially sound basis as determined pursuant to section 23-1065, subsection  
36 I, notwithstanding any other provision of this section, at least once each  
37 fiscal year, the industrial commission shall determine if there is a surplus  
38 in the revenue provided under section 23-961 that is greater than the  
39 expenses of the industrial commission and other expenditures from the  
40 administrative fund as provided under this chapter. On notice from the  
41 industrial commission to the state treasurer, the surplus shall be  
42 transferred to the special fund.

43 Sec. 18. Industrial commission; guaranty fund; transfer

44 Not less than thirty days prior to the effective date of this act, the  
45 industrial commission shall transfer \$222,848,153 in assets acceptable to the  
46 Arizona property and casualty insurance guaranty fund from the special fund

S.B. 1181

1 established by section 23-1065, Arizona Revised Statutes, as amended by this  
2 act, to the Arizona property and casualty insurance guaranty fund established  
3 by section 20-662, Arizona Revised Statutes, as amended by this act, for  
4 deposit in the workers' compensation insurance account.

5 Sec. 19. Effective date

6 This act is effective from and after June 30, 2015.

APPROVED BY THE GOVERNOR APRIL 23, 2014.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 24, 2014.