PROPOSED AMENDMENT

SENATE AMENDMENTS TO H.B. 2439

(Reference to House engrossed bill)

Strike everything after the enacting clause and insert:

"Section 1. Section 23-930, Arizona Revised Statutes, is amended to read:

23-930. Unfair claim processing practices; bad faith; benefit penalties; civil penalty; hearing; enforcement; definitions

A. The commission has exclusive jurisdiction as prescribed in this section over complaints involving alleged unfair claim processing practices or bad faith by an employer, a self-insured employer, insurance carrier or claims processing representative relating to any aspect of the administration of a workers' compensation claim. The commission shall investigate allegations of unfair claim processing or bad faith either on receiving a complaint or on its own motion.

B. A complaint of unfair claim processing or bad faith must be filed with the commission within one year after any of the following, whichever is later:

1. The action or omission alleged as the basis of the complaint occurred.

2. A notice of claim status accepting liability for the disputed benefits becomes final.

3. An award of benefits issued by the commission becomes final.

C. A complaint that is not filed as provided by subsection B of this section shall be dismissed with prejudice. The one-year filing requirement provided by subsection B of this section is the limitation of actions for any claim or complaint in tort or contract arising out of the administration of the workers' compensation claim for benefits.

D. If the commission finds that unfair claim processing or bad faith has occurred in the handling administration of a particular claim, it shall award the claimant employee, in addition to any benefits it finds are due and owing, a benefit penalty of twenty-five per cent of the benefit
amount ordered to be paid or five hundred dollars, whichever is more. AS
FOLLOWS:

1. FOR A FINDING THAT AN INITIAL CLAIM FOR BENEFITS UNDER THIS CHAPTER
WAS DENIED WITHOUT ANY REASONABLE BASIS, A BENEFIT PENALTY OF FIVE THOUSAND
DOLLARS SHALL BE AWARDED ON A CLAIM FOUND COMPENSABLE THAT DOES NOT RESULT IN
INITIAL TEMPORARY DISABILITY OR A PERIOD OF DISABILITY OF NOT MORE THAN
FOURTEEN DAYS. A BENEFIT PENALTY OF TEN THOUSAND DOLLARS OR ONE HUNDRED
PERCENT OF THE DISABILITY BENEFITS OWED, WHICHEVER IS MORE, SHALL BE AWARDED
FOR A COMPENSABLE CLAIM THAT RESULTS IN A PERIOD OF DISABILITY OF MORE THAN
FOURTEEN DAYS.

2. FOR A FINDING OF UNFAIR CLAIM PROCESSING ON AN ACCEPTED CLAIM, A
BENEFIT PENALTY OF ONE THOUSAND DOLLARS.

3. FOR A FINDING OF BAD FAITH THAT RESULTS FROM A DELAY OR FAILURE TO
PAY TEMPORARY OR PERMANENT DISABILITY BENEFITS ON AN ACCEPTED CLAIM, A
BENEFIT PENALTY OF FIVE THOUSAND DOLLARS.

4. FOR A FINDING OF BAD FAITH THAT RESULTS IN A DENIAL OR DELAY OF
MEDICAL TREATMENT ON AN ACCEPTED CLAIM, A BENEFIT PENALTY OF FIVE THOUSAND
DOLLARS FOR EACH OCCURRENCE OF DENIED OR DELAYED TREATMENT. IF THE
COMMISSION DETERMINES, BASED ON COMPETENT MEDICAL EVIDENCE, THAT THE DELAY OF
MEDICAL TREATMENT PERMANENTLY AGGRAVATED THE EMPLOYEE'S MEDICAL CONDITION OR
RESULTED IN GREATER PERMANENT DISABILITY, AN ADDITIONAL TEN THOUSAND DOLLARS
MAY BE AWARDED TO THE EMPLOYEE.

E. THE BENEFIT PENALTY PROVIDED BY THIS SECTION IS THE EMPLOYEE'S
EXCLUSIVE REMEDY FOR UNFAIR CLAIM PROCESSING OR BAD FAITH COMMITTED BY THE
SELF-INSURED EMPLOYER, INSURANCE CARRIER OR CLAIM PROCESSING REPRESENTATIVE,
EXCEPT THAT AFTER A COMMISSION AWARD FOR A BENEFIT PENALTY UNDER THIS SECTION
BECOMES FINAL, THE EMPLOYEE MAY FILE A CIVIL ACTION TO RECOVER COMPENSATORY
DAMAGES FOR INJURIES THAT ARE SEPARATE AND INDEPENDENT OF THE WORKERS'
COMPENSATION INJURY AND THAT ARISE OUT OF THE WILFUL MISCONDUCT OF THE
SELF-INSURED EMPLOYER, INSURANCE CARRIER OR CLAIM PROCESSING REPRESENTATIVE
THAT RESULTED IN THE UNFAIR CLAIM PROCESSING OR BAD FAITH HANDLING OF THE
CLAIM. A COURT DOES NOT HAVE JURISDICTION OVER A COMPLAINT ALLEGING WILFUL
MISCONDUCT PURSUANT TO THIS SUBSECTION UNTIL THE COMMISSION ISSUES A FINAL
AWARD ON THE COMPLAINT. THE CIVIL ACTION SHALL BE FILED IN A COURT OF
COMPETENT JURISDICTION WITHIN NINETY DAYS AFTER THE DATE THAT THE AWARD
BECOMES FINAL. PUNITIVE DAMAGES ARE NOT RECOVERABLE IN ANY CIVIL ACTION
BROUGHT PURSUANT TO THIS SUBSECTION. ANY CLAIM FOR COMPENSATORY DAMAGES NOT
FILED AS PROVIDED BY THIS SUBSECTION SHALL BE DISMISSED WITH PREJUDICE.

C. If the commission finds that an employer, A self-insured
employer, insurance carrier or claim processing representative has a history
or pattern of repeated unfair claim processing practices or bad faith, it may
impose a civil penalty of up to one NOT MORE THAN FIVE thousand dollars for
each violation found. The civil penalty shall be deposited, pursuant to
sections 35-146 and 35-147, in the state general fund.

D. Any party aggrieved by an order of the commission under this
section may request a hearing pursuant to section 23-947. The hearing and
decision shall be conducted pursuant to the provisions of section 23-941.

H. NOT LATER THAN THIRTY DAYS BEFORE THE DATE OF THE INITIAL HEARING,
THE DEFENDANT MAY MOVE TO DISMISS THE COMPLAINT ON ANY OF THE FOLLOWING
GROUNDS:

1. THE ALLEGED ACTS, IF ASSUMED TO BE TRUE, DO NOT SUPPORT A FINDING
OF UNFAIR CLAIM PROCESSING OR BAD FAITH AS A MATTER OF LAW.

2. THE ALLEGED ACTS WERE THE SAME ACTS ALLEGED IN A PREVIOUS
COMMISSION PROCEEDING ADJUDICATED TO CONCLUSION.

3. THE COMPLAINT WAS NOT TIMELY FILED AS PROVIDED BY SUBSECTION B OF
THIS SECTION.

4. THE COMPLAINT RELATES TO A CLAIM FOR WORKERS' COMPENSATION BENEFITS
THAT HAS NOT BEEN ACCEPTED OR ADJUDICATED.

I. A RESPONSE SHALL BE FILED WITHIN TEN DAYS AFTER THE MOTION TO
DISMISS IS FILED. THE ADMINISTRATIVE LAW JUDGE SHALL RULE ON THE MOTION
BEFORE THE INITIAL HEARING.

J. A SELF-INSURED EMPLOYER, INSURANCE CARRIAGE OR CLAIM PROCESSING
REPRESENTATIVE THAT IS ORDERED TO PAY A BENEFIT PENALTY PURSUANT TO THIS
SECTION SHALL PAY THE BENEFIT PENALTY NO LATER THAN THE FIRST BUSINESS DAY
AFTER THE DATE THE AWARD BECOMES FINAL. INTEREST SHALL ACCRUE ON THE BENEFIT
PENALTY PURSUANT TO SECTION 44-1201 FROM THE DATE ON WHICH THE PAYMENT IS DUE PURSUANT TO THIS SUBSECTION.

K. A FINAL AWARD FOR UNFAIR CLAIM PROCESSING OR BAD FAITH MAY BE ENFORCED UNDER THE PROVISIONS OF TITLE 12, CHAPTER 9, ARTICLE 3.

L. The commission shall adopt by rule a definition of unfair claim processing practices and bad faith. In adopting a rule under this subsection, the commission shall consider, among other factors, recognized and approved claim processing practices within the insurance industry, the commission's own experience in processing workers' compensation claims and the workers' compensation and insurance laws of this state.

M. This section shall not be construed as limiting or interfering with the authority of the department of insurance as provided by law to regulate any insurance carriers, including the jurisdiction of the department of insurance over unfair claim settlement practices as provided in section 20-461.

N. FOR THE PURPOSES OF THIS SECTION:

1. "OCCURRENCE" MEANS A SPECIFIC RECOMMENDED SURGICAL PROCEDURE, MEDICATION, CONSULTATION, DIAGNOSTIC STUDY OR MEDICAL APPARATUS OR A RECOMMENDED TREATMENT PLAN THAT MAY INVOLVE MORE THAN ONE VISIT TO A PROVIDER, INCLUDING A COURSE OF PHYSICAL THERAPY.

2. "WILFUL MISCONDUCT" MEANS THAT THE DENIAL, DELAY OR TERMINATION OF BENEFITS WAS COMMITTED WITH KNOWLEDGE THAT THE ACT LACKED ANY REASONABLE BASIS IN LAW OR FACT AND THAT THE ACT WAS COMMITTED WITH INTENT TO INFlict HARM ON THE EMPLOYEE.

Sec. 2. Nonseverability

If any portion of this act is finally adjudicated invalid, the entire act is void. The provisions of this act are intended to be nonseverable.

Amend title to conform