

REFERENCE TITLE: state compensation fund; conforming changes.

State of Arizona
House of Representatives
Fiftieth Legislature
First Regular Session
2011

HB 2176

Introduced by
Representative Seel

AN ACT

AMENDING SECTIONS 20-156, 20-363, 20-367, 23-901, 23-961, 23-962, 23-963 AND 23-966, ARIZONA REVISED STATUTES; REPEALING SECTIONS 23-1005 AND 23-1006, ARIZONA REVISED STATUTES; AMENDING SECTIONS 23-1021, 23-1026, 23-1029, 23-1065, 23-1070, 23-1091, 41-791, 41-2501 AND 41-4151, ARIZONA REVISED STATUTES; RELATING TO THE STATE COMPENSATION FUND.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 20-156, Arizona Revised Statutes, is amended to
3 read:

4 20-156. Examination of insurers; financial surveillance fund;
5 definition

6 A. The director shall examine the affairs, transactions, accounts,
7 records and assets of each authorized insurer as often as the director deems
8 advisable. The director shall so examine each domestic insurer, domestic
9 life and disability reinsurer as defined in section 20-1082, service company
10 as defined in section 20-1095 and mechanical reimbursement reinsurer as
11 defined in section 20-1096 at least once every five years. Examination of an
12 alien insurer shall be limited to its insurance transactions in the United
13 States.

14 B. The director shall in like manner examine each insurer applying for
15 an initial certificate of authority to do business in this state.

16 C. In lieu of making an examination, the director may accept a full
17 report of the last recent examination of a foreign or alien insurer,
18 certified to by the insurance supervisory official of another state,
19 territory, commonwealth or district of the United States.

20 ~~D. The director may examine the affairs, transactions, accounts and~~
21 ~~records of the state compensation fund as often as the director reasonably~~
22 ~~deems advisable. The results of such examination shall be the basis for any~~
23 ~~advisory recommendations which the director deems necessary regarding the~~
24 ~~operations of the state compensation fund.~~

25 ~~E.~~ D. The expenses of the examinations conducted under this section
26 shall be paid by the insurance examiners' revolving fund as provided in
27 section 20-159. Such expenses shall be limited to preexamination selection
28 and preparation costs, examination costs, postexamination costs and other
29 such costs of evaluations of compliance required by law.

30 ~~F.~~ E. The financial surveillance fund is established consisting of
31 monies collected pursuant to subsection ~~G~~ F of this section. The fund is a
32 special state fund pursuant to section 35-142, subsection A, paragraph 8.
33 ~~Monies in the fund do not revert to the state general fund.~~ The department
34 shall administer the fund. Monies in the fund are continuously appropriated
35 and are exempt from the provisions of section 35-190 relating to lapsing of
36 appropriations.

37 ~~G.~~ F. The director shall annually assess and collect from each
38 domestic insurer, other than a domestic life and disability reinsurer as
39 defined in section 20-1082, a service company as defined in section 20-1095,
40 and a mechanical reimbursement reinsurer as defined in section 20-1096, an
41 amount within the ranges provided in this subsection and on a uniform
42 percentage basis among all fee categories, to pay the costs of employing
43 financial analysts who shall assist the department in conducting financial
44 surveillance of domestic insurers. The director shall deposit all collected
45 monies in the financial surveillance fund. The director shall base the

1 amount of each insurer's assessment on the total admitted assets of the
 2 insurer as shown in its annual statement for the calendar year preceding the
 3 year in which the assessment is made, according to the following schedule:

	Minimum	Maximum
	Assessment Amount	Assessment Amount
6 Insurers with total admitted 7 assets of greater than 8 \$1,000,000,000	\$15,000	\$22,500
9 Insurers with total admitted 10 assets of at least \$200,000,000 11 but not more than \$1,000,000,000	\$ 5,000	\$ 7,500
12 Insurers with total admitted 13 assets of at least \$100,000,000 14 but not more than \$199,999,999	\$ 3,000	\$ 4,500
15 Insurers with total admitted assets 16 of at least \$50,000,000 but not 17 more than \$99,999,999	\$ 1,500	\$ 2,250
18 Insurers with total admitted assets 19 of at least \$25,000,000 but not 20 more than \$49,999,999	\$ 500	\$ 750
21 Insurers with total admitted 22 assets of not more than 23 \$24,999,999	\$ 250	\$ 375

24 ~~H-~~ G. For THE purposes of this section, "insurer" includes health
 25 care services organizations, prepaid dental plan organizations, hospital
 26 service corporations, medical service corporations, dental service
 27 corporations and hospital, medical, dental and optometric service
 28 corporations incorporated in this state.

29 Sec. 2. Section 20-363, Arizona Revised Statutes, is amended to read:
 30 20-363. Availability of services of rating organization to
 31 members

32 A. Subject to rules and regulations that have been approved by the
 33 director as reasonable, each workers' compensation rating organization shall
 34 permit any insurer writing workers' compensation insurance in this state to
 35 become a member. The rating organization shall give its members notice of
 36 proposed changes in its rules and regulations.

37 B. Each rating organization shall furnish its rating services without
 38 discrimination to its members.

39 C. Any member or insurer may request that the director review the
 40 reasonableness of any rule or regulation in its application to members at a
 41 hearing held on at least ten days' written notice to the rating organization
 42 and to the member or insurer. If the director finds that the rule or
 43 regulation is unreasonable in its application, the director shall order that
 44 the rule or regulation does not apply.

1 D. Every insurer writing workers' compensation insurance in this
2 state, ~~including the state compensation fund,~~ shall be a member of one
3 workers' compensation rating organization.

4 E. A rating organization shall have as members at least five insurers
5 authorized to write and who are writing workers' compensation insurance in
6 this state and whose combined experience is determined by the director to be
7 reasonably adequate for rate making purposes.

8 ~~F. In a rating organization of which the state compensation fund is a~~
9 ~~member, the state compensation fund shall be entitled, without election, to~~
10 ~~membership on any committee established in connection with the operation of~~
11 ~~the rating organization in this state. One-half of the members of each~~
12 ~~committee shall be chosen by the stock insurers and one-half by the nonstock~~
13 ~~insurers.~~

14 ~~G. Neither the provisions of this section nor the rules, regulations~~
15 ~~or rating plans of a rating organization affect or apply to self-rating plans~~
16 ~~and rates and charges fixed by the state compensation fund under section~~
17 ~~23-983.~~

18 Sec. 3. Section 20-367, Arizona Revised Statutes, is amended to read:
19 20-367. Workers' compensation appeals board; composition

20 A. A workers' compensation appeals board is established in the
21 department.

22 B. The board shall have at least nine but not more than eleven members
23 who are appointed by the director. The members shall serve three year terms.
24 A member shall not serve more than two consecutive terms.

25 C. The board shall be comprised of **AT LEAST**:

26 1. The following voting members:

27 (a) Five representatives of insurers, one of which is the ~~state~~
28 ~~compensation fund~~ **INSURER WITH THE LARGEST ARIZONA WORKERS' COMPENSATION**
29 **MARKET SHARE AS REPORTED BY THE DEPARTMENT OF INSURANCE IN ITS LATEST ANNUAL**
30 **REPORT.** Any licensed rating organization that meets the requirements
31 prescribed in section 20-363, subsection E may nominate from its membership
32 in this state one representative for each complete twenty per cent share of
33 the total statewide workers' compensation net written premium for the
34 preceding calendar year attributable to its membership. The director shall
35 appoint any remaining insurer representatives needed to constitute five
36 members as ratably as possible based on distribution of the total statewide
37 workers' compensation net written premium for the preceding calendar year.

38 (b) Four representatives of the public. At least two shall be
39 representatives of employers, and the remaining public members shall be
40 persons who are knowledgeable about workers' compensation insurance.

41 2. ~~A~~ **ONE** representative from any designated statistical agent who
42 shall serve as a nonvoting advisory member.

43 D. The board members shall select a chairperson who shall call
44 meetings as needed to consider requests made pursuant to section 20-367.01 or
45 on request of the director.

1 E. The board shall submit to the director a plan of operation and all
2 amendments that are necessary or suitable to ensure the fair, reasonable and
3 equitable administration of the appeals process. The plan of operation and
4 all amendments are effective on approval by the director.

5 F. Subject to the powers of the director, the board shall review
6 appeals that are filed pursuant to section 20-367.01. The board may affirm
7 the action of the rating organization or insurer or direct any rating
8 organization or insurer to modify or reverse its application of the rating
9 system that resulted in the appeal.

10 G. Members of the board are not eligible to receive compensation or
11 travel expenses under title 38, chapter 4, article 2.

12 ~~H. The board established by this section terminates on July 1, 2010~~
13 ~~pursuant to section 41-3102.~~

14 Sec. 4. Section 23-901, Arizona Revised Statutes, is amended to read:
15 23-901. Definitions

16 In this chapter, unless the context otherwise requires:

17 1. "Award" means the finding or decision of an administrative law
18 judge or the commission as to the amount of compensation or benefit due an
19 injured employee or the dependents of a deceased employee.

20 2. "Client" means an individual, association, company, firm,
21 partnership, corporation or any other legally recognized entity that is
22 subject to this chapter and that enters into a professional employer
23 agreement with a professional employer organization.

24 3. "Co-employee" means every person employed by an injured employee's
25 employer.

26 4. "Commission" means the industrial commission of Arizona.

27 5. "Compensation" means the compensation and benefits provided by this
28 chapter.

29 6. "Employee", "workman", "worker" and "operative" means:

30 (a) Every person in the service of the state or a county, city, town,
31 municipal corporation or school district, including regular members of
32 lawfully constituted police and fire departments of cities and towns, whether
33 by election, appointment or contract of hire.

34 (b) Every person in the service of any employer subject to this
35 chapter, including aliens and minors legally or illegally permitted to work
36 for hire, but not including a person whose employment is both:

37 (i) Casual.

38 (ii) Not in the usual course of the trade, business or occupation of
39 the employer.

40 (c) Lessees of mining property and their employees and contractors
41 engaged in the performance of work ~~which~~ THAT is a part of the business
42 conducted by the lessor and over which the lessor retains supervision or
43 control are within the meaning of this paragraph employees of the lessor, and
44 are deemed to be drawing wages as are usually paid employees for similar

1 work. The lessor may deduct from the proceeds of ores mined by the lessees
2 the premium required by this chapter to be paid for such employees.

3 (d) Regular members of volunteer fire departments organized pursuant
4 to title 48, chapter 5, article 1, regular firemen of any volunteer fire
5 department, including private fire protection service organizations,
6 organized pursuant to title 10, chapters 24 through 40, volunteer firemen
7 serving as members of a fire department of any incorporated city or town or
8 an unincorporated area without pay or without full pay and on a part-time
9 basis, and voluntary policemen and volunteer firemen serving in any
10 incorporated city, town or unincorporated area without pay or without full
11 pay and on a part-time basis, are deemed to be employees, but for the
12 purposes of this chapter, the basis for computing wages for premium payments
13 and compensation benefits for regular members of volunteer fire departments
14 organized pursuant to title 48, chapter 5, article 1, or organized pursuant
15 to title 10, chapters 24 through 40, regular members of any private fire
16 protection service organization, volunteer firemen and volunteer policemen of
17 these departments or organizations shall be the salary equal to the beginning
18 salary of the same rank or grade in the full-time service with the city,
19 town, volunteer fire department or private fire protection service
20 organization, provided if there is no full-time equivalent then the salary
21 equivalent shall be as determined by resolution of the governing body of the
22 city, town or volunteer fire department or corporation.

23 (e) Members of the department of public safety reserve, organized
24 pursuant to section 41-1715, are deemed to be employees. For the purposes of
25 this chapter, the basis for computing wages for premium payments and
26 compensation benefits for a member of the department of public safety reserve
27 who is a peace officer shall be the salary received by officers of the
28 department of public safety for their first month of regular duty as an
29 officer. For members of the department of public safety reserve who are not
30 peace officers, the basis for computing premiums and compensation benefits is
31 four hundred dollars a month.

32 (f) Any person placed in on-the-job evaluation or in on-the-job
33 training under the department of economic security's temporary assistance for
34 needy families program or vocational rehabilitation program shall be deemed
35 to be an employee of the department for the purpose of coverage under the
36 state workers' compensation laws only. The basis for computing premium
37 payments and compensation benefits shall be two hundred dollars per month.
38 Any person receiving vocational rehabilitation services under the department
39 of economic security's vocational rehabilitation program whose major
40 evaluation or training activity is academic, whether as an enrolled attending
41 student or by correspondence, or who is confined to a hospital or penal
42 institution, shall not be deemed to be an employee of the department for any
43 purpose. ~~Any dividend which the department's vocational rehabilitation~~
44 ~~program may be entitled to receive from the state compensation fund because~~
45 ~~of a favorable loss experience for any policy period shall not revert to the~~

~~1 state general fund but shall be applied to the department's current premium
2 obligations for workers' compensation coverage for such program.~~

3 (g) Regular members of a volunteer sheriff's reserve, which may be
4 established by resolution of the county board of supervisors, to assist the
5 sheriff in the performance of the sheriff's official duties. A roster of the
6 current members shall monthly be certified to the clerk of the board of
7 supervisors by the sheriff and shall not exceed the maximum number authorized
8 by the board. Certified members of an authorized volunteer sheriff's reserve
9 shall be deemed to be employees of the county for the purpose of coverage
10 under the Arizona workers' compensation laws and occupational disease
11 disability laws and shall be entitled to receive the benefits of these laws
12 for any compensable injuries or disabling conditions ~~which~~ THAT arise out of
13 and occur in the course of the performance of duties authorized and directed
14 by the sheriff. Compensation benefits and premium payments shall be based
15 upon the salary received by a regular full-time deputy sheriff of the county
16 involved for the first month of regular patrol duty as an officer for each
17 certified member of a volunteer sheriff's reserve. This subdivision shall
18 not be construed to provide compensation coverage for any member of a
19 sheriff's posse who is not a certified member of an authorized volunteer
20 sheriff's reserve except as a participant in a search and rescue mission or a
21 search and rescue training mission.

22 (h) A working member of a partnership may be deemed to be an employee
23 entitled to the benefits provided by this chapter upon written acceptance, by
24 endorsement, at the discretion of the insurance carrier for the partnership
25 of an application for coverage by the working partner. The basis for
26 computing premium payments and compensation benefits for the working partner
27 shall be an assumed average monthly wage of not less than six hundred dollars
28 nor more than the maximum wage provided in section 23-1041 and is subject to
29 the discretionary approval of the insurance carrier. Any compensation for
30 permanent partial or permanent total disability payable to the partner shall
31 be computed on the lesser of the assumed monthly wage agreed to by the
32 insurance carrier on the acceptance of the application for coverage or the
33 actual average monthly wage received by the partner at the time of injury.

34 (i) The sole proprietor of a business subject to this chapter may be
35 deemed to be an employee entitled to the benefits provided by this chapter on
36 written acceptance, by endorsement, at the discretion of the insurance
37 carrier of an application for coverage by the sole proprietor. The basis for
38 computing premium payments and compensation benefits for the sole proprietor
39 shall be an assumed average monthly wage of not less than six hundred dollars
40 nor more than the maximum wage provided by section 23-1041 and is subject to
41 the discretionary approval of the insurance carrier. Any compensation for
42 permanent partial or permanent total disability payable to the sole
43 proprietor shall be computed on the lesser of the assumed monthly wage agreed
44 to by the insurance carrier on the acceptance of the application for coverage

1 or the actual average monthly wage received by the sole proprietor at the
2 time of injury.

3 (j) A member of the Arizona national guard, Arizona state guard or
4 unorganized militia shall be deemed a state employee and entitled to coverage
5 under the Arizona workers' compensation law at all times while the member is
6 receiving the payment of the member's military salary from the state of
7 Arizona under competent military orders or upon order of the governor.
8 Compensation benefits shall be based upon the monthly military pay rate to
9 which the member is entitled at the time of injury, but not less than a
10 salary of four hundred dollars per month, nor more than the maximum provided
11 by the workers' compensation law. No Arizona compensation benefits shall
12 inure to a member compensable under federal law.

13 (k) Certified ambulance drivers and attendants who serve without pay
14 or without full pay on a part-time basis are deemed to be employees and
15 entitled to the benefits provided by this chapter and the basis for computing
16 wages for premium payments and compensation benefits for certified ambulance
17 personnel shall be four hundred dollars per month.

18 (l) Volunteer workers of a licensed health care institution may be
19 deemed to be employees and entitled to the benefits provided by this chapter
20 upon written acceptance by the insurance carrier of an application by the
21 health care institution for coverage of such volunteers. The basis for
22 computing wages for premium payments and compensation benefits for volunteers
23 shall be four hundred dollars per month.

24 (m) Personnel who participate in a search or rescue operation or a
25 search or rescue training operation that carries a mission identifier
26 assigned by the division of emergency management as provided in section
27 35-192.01 and who serve without compensation as volunteer state employees.
28 The basis for computation of wages for premium purposes and compensation
29 benefits is the total volunteer man-hours recorded by the division of
30 emergency management in a given quarter multiplied by the amount determined
31 by the appropriate risk management formula.

32 (n) Personnel who participate in emergency management training,
33 exercises or drills that are duly enrolled or registered with the division of
34 emergency management or any political subdivision as provided in section
35 26-314, subsection C and who serve without compensation as volunteer state
36 employees. The basis for computation of wages for premium purposes and
37 compensation benefits is the total volunteer man-hours recorded by the
38 division of emergency management or political subdivision during a given
39 training session, exercise or drill multiplied by the amount determined by
40 the appropriate risk management formula.

41 (o) Regular members of the Arizona game and fish department reserve,
42 organized pursuant to section 17-214. The basis for computing wages for
43 premium payments and compensation benefits for a member of the reserve is the
44 salary received by game rangers and wildlife managers of the Arizona game and
45 fish department for their first month of regular duty.

1 (p) Every person employed pursuant to a professional employer
2 agreement.

3 (q) Members of the department of administration capitol police
4 reserve, organized pursuant to section 41-794, are deemed to be employees.
5 For the purposes of this chapter, the basis for computing wages for premium
6 payments and compensation benefits for a member of the department of
7 administration capitol police reserve who is a peace officer shall be the
8 salary received by officers of the department of administration for their
9 first month of regular duty as an officer.

10 7. "General order" means an order applied generally throughout the
11 state to all persons under jurisdiction of the commission.

12 8. "Heart-related or perivascular injury, illness or death" means
13 myocardial infarction, coronary thrombosis or any other similar sudden,
14 violent or acute process involving the heart or perivascular system, or any
15 death resulting therefrom, and any weakness, disease or other condition of
16 the heart or perivascular system, or any death resulting therefrom.

17 9. "Insurance carrier" means ~~the state compensation fund and~~ every
18 insurance carrier duly authorized by the director of insurance to write
19 workers' compensation or occupational disease compensation insurance in the
20 state of Arizona.

21 10. "Interested party" means the employer, the employee, or if the
22 employee is deceased, the employee's estate, the surviving spouse or
23 dependents, the commission, the insurance carrier or their representative.

24 11. "Mental injury, illness or condition" means any mental, emotional,
25 psychotic or neurotic injury, illness or condition.

26 12. "Order" means and includes any rule, direction, requirement,
27 standard, determination or decision other than an award or a directive by the
28 commission or an administrative law judge relative to any entitlement to
29 compensation benefits, or to the amount thereof, and any procedural ruling
30 relative to the processing or adjudicating of a compensation matter.

31 13. "Personal injury by accident arising out of and in the course of
32 employment" means any of the following:

33 (a) Personal injury by accident arising out of and in the course of
34 employment.

35 (b) An injury caused by the wilful act of a third person directed
36 against an employee because of the employee's employment, but does not
37 include a disease unless resulting from the injury.

38 (c) An occupational disease ~~which~~ THAT is due to causes and conditions
39 characteristic of and peculiar to a particular trade, occupation, process or
40 employment, and not the ordinary diseases to which the general public is
41 exposed, and subject to section 23-901.01.

42 14. "Professional employer agreement" means a written contract between
43 a client and a professional employer organization:

44 (a) In which the professional employer organization expressly agrees
45 to co-employ all or a majority of the employees providing services for the

1 client. In determining whether the professional employer organization
2 employs all or a majority of the employees of a client, any person employed
3 pursuant to the terms of the professional employer agreement after the
4 initial placement of client employees on the payroll of the professional
5 employer organization shall be included.

6 (b) That is intended to be ongoing rather than temporary in nature.

7 (c) In which employer responsibilities for worksite employees,
8 including hiring, firing and disciplining, are expressly allocated between
9 the professional employer organization and the client in the agreement.

10 15. "Professional employer organization" means any person engaged in
11 the business of providing professional employer services. Professional
12 employer organization does not include a temporary help firm or an employment
13 agency.

14 16. "Professional employer services" means the service of entering into
15 co-employment relationships under this chapter to which all or a majority of
16 the employees providing services to a client or to a division or work unit of
17 a client are covered employees.

18 17. "Special order" means an order other than a general order.

19 ~~18. "State compensation fund" includes the state compensation fund,
20 accident benefit fund and occupational disease compensation fund in existence
21 on January 2, 1969 and shall thereafter include all funds under the
22 jurisdiction of the board of directors of the state compensation fund which
23 have been derived from the assessment of premiums, interest, penalties and
24 investment earnings for the payment of all workers' compensation and
25 occupational disease compensation benefits.~~

26 ~~19.~~ 18. "Weakness, disease or other condition of the heart or
27 perivascular system" means arteriosclerotic heart disease, cerebral vascular
28 disease, peripheral vascular disease, cardiovascular disease, angina
29 pectoris, congestive heart trouble, coronary insufficiency, ischemia and all
30 other similar weaknesses, diseases and conditions, and also previous episodes
31 or instances of myocardial infarction, coronary thrombosis or any similar
32 sudden, violent or acute process involving the heart or perivascular system.

33 ~~20.~~ 19. "Workers' compensation" means workmen's compensation as used
34 in article XVIII, section 8, Constitution of Arizona.

35 Sec. 5. Section 23-961, Arizona Revised Statutes, is amended to read:

36 23-961. Methods of securing compensation by employers; deficit
37 premium; civil penalty

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

40 1. By insuring and keeping insured the payment of such compensation
41 with ~~the state compensation fund or~~ an insurance carrier authorized by the
42 director of insurance to write workers' compensation insurance in this state.

43 2. By furnishing to the commission satisfactory proof of financial
44 ability to pay the compensation directly or through a workers' compensation
45 pool approved by the commission in the amount and manner and when due as

1 provided in this chapter. The requirements of this paragraph may be
2 satisfied by furnishing to the commission satisfactory proof that the
3 employer is a member of a workers' compensation pool approved by the
4 commission pursuant to section 23-961.01. The commission may require a
5 deposit or any other security from the employer for the payment of
6 compensation liabilities in an amount fixed by the commission, but not less
7 than one hundred thousand dollars for workers' compensation liabilities. If
8 the employer does not fully comply with the provisions of this chapter
9 relating to the payment of compensation, the commission may revoke the
10 authority of the employer to pay compensation directly.

11 B. An employer may not secure compensation to comply with this chapter
12 by any mechanism other than as provided in this section. No insurance,
13 combination or other program may be marketed, offered or sold as workers'
14 compensation that does not comply with this section. An employer violates
15 this chapter if the employer purchases or secures its obligations under this
16 chapter through a substitute for workers' compensation that does not comply
17 with this section.

18 C. Insurance carriers that transact the business of workers'
19 compensation insurance in this state shall be subject to the rules of the
20 director of insurance.

21 D. The director of insurance shall not issue to an insurance carrier a
22 certificate of authority that authorizes the insurance carrier to transact
23 workers' compensation insurance until the insurer deposits with the state
24 treasurer, through the director of insurance, cash or securities. ~~The state
25 compensation fund shall also deposit cash or securities with the state
26 treasurer, through the director of insurance, before transacting the business
27 of workers' compensation insurance.~~ The amount of cash or securities
28 required under this subsection shall be at least equal to the greater of the
29 following amounts:

30 1. One hundred thousand dollars.

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

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

40 (b) The aggregate of the amounts determined for each of the three
41 years immediately before the preceding December 31 or other time as requested
42 by the department of insurance ~~which~~ THAT equals the greater of the
43 following:

1 (i) Sixty-five per cent of the earned premiums for the year less all
2 direct reported loss and loss expense payments made on compensation claims
3 incurred in the corresponding year.

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

7 E. On or before April 15 and on any date that the department of
8 insurance specifically requests, an insurance carrier shall file with the
9 department of insurance the information necessary to compute the required
10 amount to be deposited pursuant to subsection D of this section and shall
11 deposit any required additional amount.

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

15 G. Cash or securities deposited pursuant to this section are subject
16 to approval by the director of insurance at all times. The director of
17 insurance shall hold the cash or securities for fulfillment of the
18 obligations of the insurance carrier, including an insurance carrier acting
19 as a reinsurer, under this chapter. The commission shall have a lien against
20 the cash or securities deposited to the extent the special fund is liable to
21 pay the obligations secured by the cash or securities.

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

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

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

1 including workers' compensation pools, on or before March 31 of each year
2 shall pay a tax of not more than three per cent of the premiums ~~which~~ THAT
3 would have been paid by the employer if the employer had been fully insured
4 ~~under a plan available from the state compensation fund~~ BY AN INSURANCE
5 CARRIER AUTHORIZED TO TRANSACT WORKERS' COMPENSATION INSURANCE IN THIS STATE
6 during the preceding calendar year. The commission shall adopt rules that
7 shall specify ~~those~~ THE PREMIUM PLANS AND methods to be used for the
8 calculation of rates and premiums and that shall be the basis for the taxes
9 assessed to self-insured employers. The tax shall be not less than two
10 hundred fifty dollars per annum and shall be computed and collected by the
11 commission and paid to the state treasurer for the credit of the
12 administrative fund at a rate not exceeding three per cent to be fixed
13 annually by the industrial commission. The rate shall be no more than is
14 necessary to cover the actual expenses of the industrial commission in
15 carrying out its powers and duties under this title. Any quarterly payments
16 of tax pursuant to subsection L of this section shall be deducted from the
17 tax payable pursuant to this subsection.

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

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

22 2. The insured employer conducts drug testing of prospective
23 employees.

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

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

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

39 M. If an overpayment of taxes results from the method prescribed in
40 subsection L of this section the industrial commission may refund the
41 overpayment without interest.

42 N. An insurer who fails to pay the tax prescribed by subsection J or L
43 of this section or the amount prescribed by section 23-1065, subsection A is
44 subject to a civil penalty equal to the greater of twenty-five dollars or

1 five per cent of the tax or amount due plus interest at the rate of one per
2 cent per month from the date the tax or amount was due.

3 0. ~~Neither the state compensation fund nor~~ An insurance carrier
4 authorized to write workers' compensation insurance may NOT assess an
5 employer premiums for services provided by a contractor alleged to be an
6 employee under section 23-902, subsection B or C, unless the ~~fund or~~ carrier
7 has done both of the following:

8 1. Prepared written audit or field investigation findings establishing
9 that all applicable factors for determining employment status under section
10 23-902 have been met.

11 2. Provided a copy of such findings to the employer in advance of
12 assessing a premium.

13 P. Notwithstanding section 23-901, paragraph 6, subdivision (i), a
14 sole proprietor may waive the sole proprietor's rights to workers'
15 compensation coverage and benefits if both the sole proprietor and the
16 insurance carrier of the employer subject to this chapter for which the sole
17 proprietor performs services sign and date a waiver ~~which~~ THAT is
18 substantially in the following form:

19 I am a sole proprietor, and I am doing business as
20 (name of sole proprietor). I am performing work as an
21 independent contractor for (name of employer). I am not the
22 employee of (name of employer) for workers' compensation
23 purposes, and, therefore, I am not entitled to workers'
24 compensation benefits from (name of employer). I understand
25 that if I have any employees working for me, I must maintain
26 workers' compensation insurance on them.

27 _____
28 Sole proprietor Date
29 _____
30 Insurance carrier Date

31 Sec. 6. Section 23-962, Arizona Revised Statutes, is amended to read:
32 23-962. Insurance by governmental units; payment of premiums

33 A. Any county, city, town, municipal corporation or school district
34 shall insure in any manner prescribed by the terms of section 23-961.
35 Effective July 1, 1983, this state through the department of administration
36 shall self-insure its liability, if any, under chapter 5 of this title and
37 this chapter without the necessity of complying with ~~the provisions of~~
38 section 23-961, subsection A, paragraph 2. On or before June 30, 1983, the
39 state compensation fund and the department of administration shall enter into
40 an interagency contract pursuant to title 11, chapter 7, article 3 for the
41 return to this state of the reserves established and held by the state
42 compensation fund for all claims against this state ~~which~~ THAT were incurred
43 on or before that date. ~~The first five hundred thousand dollars of~~ These
44 reserves ~~shall be credited to the workers' compensation liability loss~~
45 ~~revolving fund established pursuant to section 41-622, and the remainder~~

1 shall be credited to the state general fund. The department of
 2 administration shall direct the continuing payment and processing of all
 3 claims against this state for injuries to state employees ~~which~~ THAT were
 4 incurred both before and after July 1, 1983. All claims payments shall be
 5 made or reimbursed by the department on behalf of this state and for expenses
 6 incurred in connection with the payment and processing of such claims. The
 7 department of administration may procure excess loss coverage from ~~the state~~
 8 ~~compensation fund~~ AN INSURANCE CARRIER for individual or aggregate claims, or
 9 both, in such amounts and at such primary retention levels as the department
 10 of administration deems in the best interest of the state.

11 B. The clerk of the board of supervisors of each county, the clerk of
 12 each political subdivision and the superintendent of each school district
 13 ~~which~~ THAT insures its workers' compensation liability with ~~the state~~
 14 ~~compensation fund~~ AN INSURANCE CARRIER shall furnish quarterly to the ~~state~~
 15 ~~compensation fund~~ INSURANCE CARRIER a true payroll showing the total amount
 16 paid to employees subject to the provisions of this chapter during each month
 17 of the quarter, segregated in accordance with the requirements of the ~~state~~
 18 ~~compensation fund~~ INSURANCE CARRIER.

19 C. Each clerk and school superintendent shall thereupon prepare and
 20 submit to his respective governing body for approval a claim for the amount
 21 of premiums due the ~~state compensation fund~~ INSURANCE CARRIER. Such premiums
 22 shall be at once paid to the ~~state compensation fund~~ INSURANCE CARRIER by the
 23 proper officer. The department of administration shall draw a warrant for
 24 such premiums as are due until June 30, 1983 from the state in favor of the
 25 treasurer for the benefit of the ~~state compensation fund~~ INSURANCE CARRIER
 26 and the treasurer shall at once pay the warrant from the general fund and the
 27 appropriation made therefor in the general appropriation bill for the ~~state~~
 28 ~~compensation fund~~ INSURANCE CARRIER.

29 Sec. 7. Section 23-963, Arizona Revised Statutes, is amended to read:
 30 23-963. Provisions of compensation insurance policy

31 Every policy of insurance covering the liability of the employer for
 32 workers' compensation, ~~whether issued by the state compensation fund or by~~
 33 ~~another~~, shall cover the entire liability of the employer to his employees
 34 covered by the policy or contract, and be deemed to contain the following
 35 provisions:

36 1. That as between the employee and the insurance carrier the notice
 37 to or knowledge of the occurrence of the injury on the part of the employer
 38 shall be deemed notice or knowledge of the insurance carrier.

39 2. That jurisdiction of the employer shall be jurisdiction of the
 40 insurance carrier.

41 3. That the insurance carrier shall be bound by and subject to the
 42 orders, findings, decisions and awards rendered against the employer for
 43 payment of compensation.

1 4. That the insolvency or bankruptcy of the employer and his discharge
2 therein shall not relieve the insurance carrier or workers' compensation pool
3 from payment of compensation for injuries or death sustained by an employee
4 during the life of the policy or contract.

5 Sec. 8. Section 23-966, Arizona Revised Statutes, is amended to read:
6 23-966. Failure of employer or insurance carrier to pay claim
7 or comply with commission order; reimbursement of
8 funds

9 A. If an insurance carrier or self-insured employer or other employer
10 authorized by the commission to process or pay claims directly pursuant to
11 this chapter does not fully comply with the provisions of the workers'
12 compensation law relating to the PROCESSING OR payment of compensation,
13 medical benefits or the final orders of the commission, the workers'
14 compensation claims shall be assigned by the commission to the ~~state~~
15 ~~compensation~~ SPECIAL fund, ~~and the state compensation fund shall process the~~
16 ~~ESTABLISHED BY SECTION 23-1065. THE SPECIAL FUND SHALL ENSURE THAT THESE~~
17 ~~claims ARE PROCESSED and pay such THAT compensation, benefits or amounts due~~
18 ~~on behalf of and under the direction of the special fund established by~~
19 ~~section 23-1065. The special fund shall periodically, but not less~~
20 ~~frequently than quarterly, reimburse the state compensation fund for the~~
21 ~~compensation, benefits or amounts so paid, together with reasonable~~
22 ~~administrative costs, necessary expenses and reasonable attorney fees ARE~~
23 PAID. THE SPECIAL FUND MAY USE THIRD-PARTY PROCESSORS OR OTHER LEGAL,
24 MEDICAL, CLAIMS OR LABOR MARKET PERSONNEL TO ASSIST IN THE PROCESSING AND
25 PAYMENT OF CLAIMS ASSIGNED UNDER THIS SECTION.

26 B. In addition to ~~any reimbursement~~ EXPENDITURES authorized under
27 subsection A of this section, the special fund may use monies for any expense
28 or service that is necessary to ENSURE THAT CLAIMS ASSIGNED UNDER SUBSECTION
29 A OF THIS SECTION ARE PROCESSED AND PAID, NECESSARY TO assist in the
30 determination of liability of a claim that is assigned under this section or
31 ~~collected~~ NECESSARY TO ASSIST IN THE COLLECTION OF MONIES OWED TO THE SPECIAL
32 FUND UNDER THIS SECTION, INCLUDING COLLECTION against the cash, securities,
33 bond and other assets of the insurance carrier or employer. These expenses
34 may include travel, discovery procedures and employing any THIRD-PARTY
35 PROCESSOR, expert, consultant or professional, including an attorney,
36 auditor, examiner or actuary. THE SPECIAL FUND SHALL REIMBURSE THE
37 ADMINISTRATIVE FUND FOR ALL EXPENSES INCURRED BY THE ADMINISTRATIVE FUND
38 RELATED TO THE PROCESSING AND PAYMENT OF CLAIMS ASSIGNED UNDER THIS SECTION.

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

1 D. The commission may increase the assessment established in section
2 23-1065 by not to exceed one-half of one per cent of such assessment in any
3 one year to reimburse the special fund for its ~~net~~ loss incurred under this
4 section.

5 Sec. 9. Repeal

6 Sections 23-1005 and 23-1006, Arizona Revised Statutes, are repealed.

7 Sec. 10. Section 23-1021, Arizona Revised Statutes, is amended to
8 read:

9 23-1021. Right of employee to compensation

10 ~~A.~~ Every employee coming within the provisions of this chapter who is
11 injured, and the dependents of every such employee who is killed by accident
12 arising out of and in the course of his employment, wherever the injury
13 occurred, unless the injury was purposely self-inflicted, shall be entitled
14 to receive and shall be paid such compensation for loss sustained on account
15 of the injury or death, such medical, nurse and hospital services and
16 medicines, and such amount of funeral expenses in the event of death, as are
17 provided by this chapter.

18 ~~B. Every employee who is covered by insurance in the state
19 compensation fund and who is injured by accident arising out of and in the
20 course of employment, and the dependents of every such employee who is
21 killed, provided the injury was not purposely self-inflicted, shall be paid
22 such compensation from the state compensation fund for loss sustained on
23 account of the injury and shall receive such medical, nurse and hospital
24 services and medicines, and such amount of funeral expenses in event of
25 death, as provided in this chapter.~~

26 Sec. 11. Section 23-1026, Arizona Revised Statutes, is amended to
27 read:

28 23-1026. Periodical medical examination of employee; effect of
29 refusal or obstruction of examination or treatment

30 A. An employee who may be entitled to compensation under this chapter
31 shall submit himself for medical examination from time to time at a place
32 reasonably convenient for the employee, if and when requested by the
33 commission, ~~the state compensation fund,~~ his employer or the insurance
34 carrier. A place is reasonably convenient even if it is not where the
35 employee resides if it is the place where the employee was injured and the
36 employer or the insurance carrier pays in advance the employee's reasonable
37 travel expenses, including the cost of transportation, food, lodging and loss
38 of pay, if applicable.

39 B. The request for the medical examination shall fix a time and place
40 having regard to the convenience of the employee, his physical condition and
41 his ability to attend. The employee may have a physician present at the
42 examination if procured and paid for by himself.

43 C. If the employee refuses to submit to the medical examination or
44 obstructs the examination, his right to compensation shall be suspended until

1 the examination has been made, and no compensation shall be payable during or
2 for such period.

3 D. A physician who makes or is present at the medical examination
4 provided by this section may be required to testify as to the result thereof.

5 E. Upon appropriate application and hearing, the commission may reduce
6 or suspend the compensation of an employee who persists in unsanitary or
7 injurious practices tending to imperil or retard his recovery, or who refuses
8 to submit to medical or surgical treatment reasonably necessary to promote
9 his recovery.

10 F. An employee shall be excused from attending a scheduled medical
11 examination if the employee requests a protective order and the
12 administrative law judge finds that the scheduled examination is unnecessary,
13 would be cumulative or could reasonably be timely scheduled with an
14 appropriate physician where the employee resides. If a protective order is
15 requested the burden is on the employer or insurance carrier to establish
16 that a medical examination should be scheduled at a place other than where
17 the employee resides. If an employee has left this state and the employer or
18 insurance carrier pays in advance the employee's reasonable travel expenses,
19 including the cost of transportation, food, lodging and loss of pay, if
20 applicable, the employer or insurance carrier is entitled to have the
21 employee return to this state one time a year for examination or one time
22 following the filing of a petition to reopen.

23 Sec. 12. Section 23-1029, Arizona Revised Statutes, is amended to
24 read:

25 23-1029. Repeal of chapter; effect on rights of parties

26 ~~A.~~ If the provisions of this chapter relative to compensation for
27 injuries to or death of workmen are repealed, and the injury or death has not
28 previously been compensated by lump payment or completed monthly payments,
29 the period intervening between the injury or death and the repeal shall not
30 be computed as a part of the time limited by law for the commencement of any
31 action relating to such injury or death. The action shall be commenced
32 within one year after the repeal and any amount paid as compensation shall be
33 deducted from the right of recovery.

34 ~~B. In event of such repeal, all money in the state compensation fund~~
35 ~~at the time of the repeal shall be subject to disposition by the legislature.~~

36 Sec. 13. Section 23-1065, Arizona Revised Statutes, is amended to
37 read:

38 23-1065. Special fund; purposes; investment committee

39 A. The industrial commission may direct the payment into the state
40 treasury of not to exceed one and one-half per cent of all premiums received
41 by ~~the state compensation fund and~~ private insurance carriers during the
42 immediately preceding calendar year. The same percentage shall be assessed
43 against self-insurers based on the total cost to the self-insured employer as
44 provided in section 23-961, subsection J. Such assessments shall be computed
45 on the same premium basis as provided for in section 23-961, subsections J,

1 K, L, M and N and shall be no more than is necessary to keep the special fund
2 actuarially sound. Such payments shall be placed in a special fund within
3 the administrative fund to provide, at the discretion of the commission, such
4 additional awards as may be necessary to enable injured employees to accept
5 the benefits of any law of ~~the~~ THIS state or of the United States, or both
6 jointly, for promotion of vocational rehabilitation of persons disabled in
7 industry.

8 B. In claims involving an employee who has a preexisting
9 industrially-related permanent physical impairment of the type specified in
10 section 23-1044, subsection B and who thereafter suffers an additional
11 permanent physical impairment of the type specified in such subsection, the
12 claim involving the subsequent impairment is eligible for reimbursement, as
13 provided by subsection D of this section, according to the following:

14 1. The employer in whose employ the subsequent impairment occurred or
15 its insurance carrier is solely responsible for all temporary disability
16 compensation to which the employee is entitled and for an amount equal to the
17 permanent disability compensation provided by section 23-1044, subsection B
18 for the subsequent impairment. If the employee is determined to have
19 sustained no loss of earning capacity after the medically stationary date,
20 the employer or carrier shall pay him as a vocational rehabilitation bonus
21 the amount calculated under this paragraph as a lump sum, which shall be a
22 credit against any permanent compensation benefits awarded in any subsequent
23 proceeding. The amount of the vocational rehabilitation bonus for which the
24 employer or carrier is responsible under this paragraph shall be calculated
25 solely on physical, medically rated permanent impairment and not on
26 occupational or other factors.

27 2. If the commission determines that the employee is entitled to
28 compensation for loss of earning capacity under section 23-1044, subsection C
29 or permanent total disability under section 23-1045, subsection B, the total
30 amount of permanent benefits for which the employer or carrier is solely
31 responsible under paragraph 1 of this subsection shall be expended first,
32 with monthly payments made according to the loss of earning capacity or
33 permanent total disability award. The employer or carrier and the special
34 fund are equally responsible for the remaining amount of compensation for
35 loss of earning capacity under section 23-1044, subsection C or permanent
36 total disability under section 23-1045, subsection B. This paragraph shall
37 not be construed as requiring payment of any benefits under section 23-1044,
38 subsection B in any case in which an employee is entitled to benefits for
39 loss of earning capacity under section 23-1044, subsection C or permanent
40 total disability benefits under section 23-1045, subsection B.

41 C. In claims involving an employee who has a preexisting physical
42 impairment ~~which~~ THAT is not industrially-related and, whether congenital or
43 due to injury or disease, is of such seriousness as to constitute a hindrance
44 or obstacle to employment or to obtaining reemployment if the employee
45 becomes unemployed, and the impairment equals or exceeds a ten per cent

1 permanent impairment evaluated in accordance with the American medical
2 association guides to the evaluation of permanent impairment, and the
3 employee thereafter suffers an additional permanent impairment not of the
4 type specified in section 23-1044, subsection B, the claim involving the
5 subsequent impairment is eligible for reimbursement, as provided by
6 subsection D of this section, under the following conditions:

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

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

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

- 15 (a) Epilepsy.
- 16 (b) Diabetes.
- 17 (c) Cardiac disease.
- 18 (d) Arthritis.
- 19 (e) Amputated foot, leg, arm or hand.
- 20 (f) Loss of sight of one or both eyes or a partial loss of uncorrected
21 vision of more than seventy-five per cent bilaterally.
- 22 (g) Residual disability from poliomyelitis.
- 23 (h) Cerebral palsy.
- 24 (i) Multiple sclerosis.
- 25 (j) Parkinson's disease.
- 26 (k) Cerebral vascular accident.
- 27 (l) Tuberculosis.
- 28 (m) Silicosis.
- 29 (n) Psychoneurotic disability following treatment in a recognized
30 medical or mental institution.
- 31 (o) Hemophilia.
- 32 (p) Chronic osteomyelitis.
- 33 (q) Hyperinsulinism.
- 34 (r) Muscular dystrophies.
- 35 (s) Arteriosclerosis.
- 36 (t) Thrombophlebitis.
- 37 (u) Varicose veins.
- 38 (v) Heavy metal poisoning.
- 39 (w) Ionizing radiation injury.
- 40 (x) Compressed air sequelae.
- 41 (y) Ruptured intervertebral disk.

42 4. The employer or carrier and the special fund are equally
43 responsible for the amount of compensation for loss of earning capacity under
44 section 23-1044, subsection C or permanent total disability under section
45 23-1045, subsection B.

1 D. The employer or insurance carrier shall notify the commission of
 2 its intent to claim reimbursement for an eligible claim under subsection B or
 3 C of this section not later than the time the employer or insurance carrier
 4 notifies the commission pursuant to section 23-1047, subsection A. Upon
 5 receiving notice the commission may expend funds from the special fund
 6 created by this section for travel and discovery procedures and for the
 7 employment of such independent legal, medical, rehabilitation, claims or
 8 labor market consultants or experts as may be deemed necessary by the
 9 commission to assist in the determination of the liability of the special
 10 fund, if any, under subsection B or C of this section. In the event there is
 11 any dispute regarding liability to the special fund pursuant to subsection B
 12 or C of this section, the commission shall not delay the issuance of a
 13 permanent award pursuant to section 23-1047, subsection B.

14 E. If the special fund created by this section is determined to be
 15 liable under either subsection B or C of this section, the employer or
 16 insurance carrier ~~which~~ THAT is primarily liable shall pay the entire amount
 17 of the award to the injured employee and the commission shall by rule provide
 18 for the reimbursement of the employer or insurance carrier on an annual
 19 basis. In any case arising out of subsection B or C of this section, the
 20 written approval of the special fund is required for the compromise of any
 21 claim made pursuant to section 23-1023. In any such case, written approval
 22 shall not be unreasonably withheld by the special fund, carrier, self-insured
 23 employer or other person responsible for the payment of compensation.
 24 Failure to obtain the written approval of the special fund shall not cause
 25 the injured worker to lose any benefits but ends the special fund's liability
 26 for reimbursement and makes the employer or carrier solely responsible for
 27 the payment of the remaining benefits.

28 F. The employer or insurance carrier shall make its claim for
 29 reimbursement to the commission no later than November 1 each year, for
 30 payments made pursuant to subsection B or C of this section during the twelve
 31 months prior to October 1 each year. Claims shall be paid before December 31
 32 each year. If the total annual reserved liabilities of the special fund
 33 obligated under subsections B and C of this section exceed six million
 34 dollars, as determined by the annual actuarial study performed pursuant to
 35 subsection I of this section, the commission, after notice and a hearing, may
 36 levy an additional assessment under subsection A of this section of up to
 37 one-half per cent to meet such liabilities. Any insurance carrier or
 38 employer who may be adversely affected by the additional assessment may at
 39 any time prior to the sixtieth day after such additional assessment is
 40 ordered file a complaint challenging the validity of the additional
 41 assessment in the superior court in Maricopa county for a judicial review of
 42 the additional assessment. On judicial review the determination of the
 43 commission shall be upheld if supported by substantial evidence in the record
 44 considered as a whole.

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

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

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

16 J. The special fund of the commission consists of all monies from
17 premiums and assessments, except penalties assessed pursuant to this chapter,
18 received and paid into the fund, property and securities acquired by the use
19 of monies in the fund, interest earned on monies in the fund and other monies
20 derived from the sale, use or lease of properties belonging to the fund. The
21 special fund created by this section shall be administered by the director of
22 the industrial commission, subject to the authority of the industrial
23 commission. The director of the commission with approval of the investment
24 committee, in the administration of the special fund, may provide loans,
25 subject to repayment, budgetary review and legislative appropriation, to the
26 administrative fund for the purposes and subject to section 23-1081, acquire
27 real property and acquire or construct a building or other improvements on
28 the real property as may be necessary to house, contain, furnish, equip and
29 maintain offices and space for departmental and operational facilities of the
30 commission. The commission when using space constructed pursuant to this
31 section shall make equal payments of rent on a semiannual basis, which shall
32 be deposited in the special fund. The investment committee shall determine
33 the amount of the rent, which must be at least equal to or greater than that
34 determined by the joint committee on capital review for buildings of similar
35 design and construction as provided by section 41-792.01.

36 K. There is established an investment committee consisting of the
37 director and the chairman of the commission and three persons knowledgeable
38 in investments and economics appointed by the governor. Of the members
39 appointed by the governor, one shall be a professional in the investment
40 business, one shall represent workers' compensation insurers and one shall
41 represent self-insurers. The term of members appointed by the governor is
42 three years, which shall begin on July 1 and end on June 30 three years
43 later. The committee shall prescribe by rule investment policies and
44 supervise the investment activities of the special fund.

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

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

5 2. Reimbursement for expenses pursuant to title 38, chapter 4,
6 article 2.

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

8 N. The investment committee shall periodically review and assess the
9 investment strategy.

10 O. The investment committee, by resolution, may invest and reinvest
11 the surplus or reserves in the funds established under this chapter in any
12 legal investments authorized under section 38-719.

13 P. In addition to the investments authorized under section 38-719, the
14 investment committee may approve the investment in real property and
15 improvements on real property to house and maintain offices of the
16 commission, including spaces for its departmental and operational facilities.
17 Title to the real estate and improvements on the real estate vests in the
18 special fund of the commission, and the assets become part of the fund as
19 provided by this section.

20 Q. The investment committee may appoint a custodian for the
21 safekeeping of all or any portion of the investments owned by the special
22 fund of the commission and may register stocks, bonds and other investments
23 in the name of a nominee. Except for investments held by a custodian or in
24 the name of a nominee, all securities purchased pursuant to subsection O of
25 this section shall promptly be deposited with the state treasurer as
26 custodian thereof, who shall collect the dividends, interest and principal
27 thereof, and pay, when collected, into the special fund. The state treasurer
28 shall pay all vouchers drawn for the purchase of securities. The director
29 may sell any of the securities as the director deems appropriate, if
30 authorized by resolution of the investment committee, and the proceeds
31 therefrom shall be payable to the state treasurer for the account of the
32 special fund upon delivery of the securities to the purchaser or the
33 purchaser's agent.

34 Sec. 14. Section 23-1070, Arizona Revised Statutes, is amended to
35 read:

36 23-1070. Medical, surgical and hospital benefits provided by
37 employer

38 A. An employer, other than the state or a political subdivision
39 thereof, who secures compensation to his employees in the manner provided in
40 ~~either SECTION 23-961, subsection A, paragraph 1, or subsection A, paragraph~~
41 ~~2 of section 23-961~~, alone or jointly with other employers ~~may~~, in lieu of
42 making premium payments for medical, surgical and hospital benefits, ~~MAY~~
43 provide such benefits to injured employees and may collect one-half of the
44 cost thereof from his employees, not to exceed one dollar per month from any
45 employee, which may be deducted from the wages of the employee.

1 B. An employer electing to provide such benefits shall notify his
2 insurance carrier and the commission of the election and render a detailed
3 statement of the arrangements made therefor to the commission.

4 C. An employer who maintains a hospital for his employees or who
5 contracts with a physician for the hospital care of injured employees ~~shall~~,
6 on or before January 30 each year, **SHALL** make a verified written report to
7 the commission for the preceding year showing the total amount of hospital
8 fees collected and showing separately the amount contributed by the employees
9 and the amount contributed by the employers. The report shall also contain
10 an itemized account of the expenditures, investments or other disposition of
11 the fees, and a statement showing the balance remaining.

12 D. An employer who fails to notify his insurance carrier and the
13 commission of his election to provide such benefits, or who maintains a
14 hospital or contracts for hospital service as provided in subsection C of
15 this section, and fails to make the financial report required therein, is
16 liable for such benefits as provided in section 23-1062.

17 E. If the medical, surgical or hospital aid or treatment being
18 furnished by an employer is such that there is reasonable ground to believe
19 that the health, life or recovery of any employee is endangered or impaired
20 thereby, the commission ~~may~~, upon application of the employee or upon its own
21 motion, **MAY** order a change of physicians or other conditions. If the
22 employer fails to comply with the order promptly, the injured employee may
23 elect to have medical, surgical or hospital aid or treatment provided by or
24 through the ~~state compensation~~ **SPECIAL** fund. In that event the claim of the
25 injured employee against the employer shall be assigned to the ~~state~~
26 ~~compensation~~ **SPECIAL** fund for the benefit thereof, and the ~~state compensation~~
27 **SPECIAL** fund shall furnish to the insured employee medical, surgical or
28 hospital aid or treatment as provided in this chapter.

29 Sec. 15. Section 23-1091, Arizona Revised Statutes, is amended to
30 read:

31 **23-1091. Assigned risk plan**

32 A. An insurer may decline to issue a workers' compensation or
33 occupational disease policy to an employer. An employer who is refused
34 coverage by ~~the state compensation fund and~~ two or more ~~other~~ insurers shall
35 be placed in the assigned risk plan established by this section.

36 B. There shall be only one workers' compensation assigned risk plan in
37 this state. The director of the department of insurance shall contract with
38 a qualified party to be the assigned risk plan administrator.

39 C. The administrator may charge all insurers transacting workers'
40 compensation insurance in this state a reasonable fee to administer the
41 assigned risk plan. Each insurer shall pay a share of the fee based on the
42 insurer's share of the preceding calendar year's total net direct workers'
43 compensation and occupational disease compensation insurance premiums written
44 in this state.

1 D. The assigned risk plan administrator shall develop a plan of
2 operation and, on approval by the director of the department of insurance,
3 shall issue a directive for the equitable apportioning of assigned risks
4 among all the insurers, ~~including the state compensation fund~~. At any time,
5 the director of the department of insurance may require the assigned risk
6 plan administrator to amend the plan of operation. The plan shall include at
7 least the following:

8 1. A method for the administrator to select one or more insurers
9 transacting workers' compensation insurance in this state to act as servicing
10 carriers. An administrator that is an insurer may act as its own servicing
11 carrier. The administrator shall monitor the performance of the servicing
12 carriers and shall measure performance against the administrator's
13 established standards. A servicing carrier shall:

- 14 (a) Provide coverage for the risks placed in the assigned risk plan.
- 15 (b) Pay claims.
- 16 (c) Provide safety management services.
- 17 (d) Perform other activities that are related to the preliminary and
18 subsequent effectuation of the contract and that arise out of the contract,
19 including paying commissions to any licensed property and casualty agent or
20 broker in this state.

21 2. A method for apportioning the workers' compensation assigned risks
22 among all insurers, ~~including the state compensation fund~~.

23 E. Unless the director ~~determines~~ DECIDES to use another method, the
24 rates used to determine the premiums of risks in the assigned risk plan are
25 the rates annually filed with the director of the department of insurance by
26 the designated rating organization pursuant to section 20-357, subsection B,
27 unless the director requires the use of rates from another rating
28 organization, plus a uniform percentage increase that applies to all
29 classifications, that is determined by the designated rating organization or,
30 if the director directs, another rating organization and that is subject to
31 approval by the director. The expected loss rates, ballast factors and other
32 factors for use with the uniform experience rating plan as described in title
33 20, chapter 2, article 4 and filed with the director also apply to experience
34 rated risks in the assigned risk plan.

35 F. Rating classifications used in the assigned risk plan shall conform
36 to the uniform classification plan. Subclassifications and rating rule
37 deviations shall not be used in the assigned risk plan.

38 G. All insurers participating in workers' compensation or occupational
39 disease compensation insurance shall participate in the assigned risk plan.

40 H. Distribution of assignments among insurers shall be made in
41 proportion to each insurer's share of the preceding calendar year's total net
42 direct workers' compensation and occupational disease compensation insurance
43 premium written in this state, as far as practicable.

44 I. An insurer that refuses to participate in the assigned risk plan
45 shall not be authorized to write workers' compensation coverage in this

1 state. If an insurer refuses to participate in the assigned risk plan after
2 being authorized to write workers' compensation coverage in this state, the
3 insurer's authorization shall be revoked. If an insurer withdraws from or is
4 terminated from writing workers' compensation coverage in this state, the
5 insurer remains responsible for all injuries sustained during the period of
6 coverage stated in the policies of that insurer.

7 Sec. 16. Section 41-791, Arizona Revised Statutes, is amended to read:

8 41-791. Powers and duties relating to public buildings
9 maintenance; compensation of personnel

10 A. The department is responsible for the direction and control of
11 public buildings maintenance as prescribed in this article.

12 B. The department is responsible for the allocation of space,
13 operation, alteration, renovation and security of the following buildings:

14 1. The state capitol executive tower of the state capitol building.

15 2. The state office buildings in Tucson.

16 3. All other buildings owned or leased by the state and located near
17 the state capitol building and the state office buildings in Tucson, except
18 for:

19 (a) Buildings occupied, operated and maintained by the following state
20 agencies:

21 (i) The department of transportation.

22 (ii) The Arizona power authority.

23 ~~(iii) The state compensation fund.~~

24 (b) The state capitol museum, the legislative services wing, house of
25 representatives and senate wings of the state capitol building and the public
26 records retention center subject to section 41-1304.

27 (c) The department of economic security facilities purchased with
28 federal funding assistance and exclusively and continuously operated and
29 maintained for its own occupancy.

30 (d) The Arizona courts building.

31 C. The department is responsible for the maintenance of the following
32 buildings and grounds:

33 1. The entire state capitol building and the grounds adjacent to it.

34 2. The state office buildings in Tucson and the grounds adjacent to
35 them.

36 3. Other buildings and grounds owned or leased by the state if the
37 function is not otherwise assigned, except for the interior of the Arizona
38 courts building.

39 D. The director may establish rules for the operation, maintenance and
40 security of buildings and grounds under his jurisdiction.

41 E. The department shall:

42 1. Employ engineers and maintenance and operations personnel as
43 required, including a buildings manager for the state office buildings in
44 Tucson.

45 2. Determine the hours of duty and assignment of personnel.

1 F. All personnel employed under this article are eligible to receive
2 compensation as determined under section 38-611.

3 Sec. 17. Section 41-2501, Arizona Revised Statutes, is amended to
4 read:

5 41-2501. Applicability

6 A. This chapter applies only to procurements initiated after January
7 1, 1985 unless the parties agree to its application to procurements initiated
8 before that date.

9 B. This chapter applies to every expenditure of public monies,
10 including federal assistance monies except as otherwise specified in section
11 41-2637, by this state, acting through a state governmental unit as defined
12 in this chapter, under any contract, except that this chapter does not apply
13 to either grants as defined in this chapter, or contracts between this state
14 and its political subdivisions or other governments, except as provided in
15 chapter 24 of this title and in article 10 of this chapter. This chapter
16 also applies to the disposal of state materials. This chapter and rules
17 adopted under this chapter do not prevent any state governmental unit or
18 political subdivision from complying with the terms of any grant, gift,
19 bequest or cooperative agreement.

20 C. All political subdivisions and other local public agencies of this
21 state may adopt all or any part of this chapter and the rules adopted
22 pursuant to this chapter.

23 D. The Arizona board of regents, ~~AND~~ the legislative and judicial
24 branches of state government ~~and the state compensation fund~~ are not subject
25 to this chapter except as prescribed in subsection E of this section.

26 E. The Arizona board of regents and the judicial branch shall adopt
27 rules prescribing procurement policies and procedures for themselves and
28 institutions under their jurisdiction. The rules must be substantially
29 equivalent to the policies and procedures prescribed in this chapter.

30 F. The Arizona state lottery commission is exempt from this chapter
31 for procurement relating to the design and operation of the lottery or
32 purchase of lottery equipment, tickets and related materials. The executive
33 director of the Arizona state lottery commission shall adopt rules
34 substantially equivalent to the policies and procedures in this chapter for
35 procurement relating to the design and operation of the lottery or purchase
36 of lottery equipment, tickets or related materials. All other procurement
37 shall be as prescribed by this chapter.

38 G. The Arizona health care cost containment system administration is
39 exempt from this chapter for provider contracts pursuant to section 36-2904,
40 subsection A and contracts for goods and services, including program
41 contractor contracts pursuant to title 36, chapter 29, articles 2 and 3. All
42 other procurement, including contracts for the statewide administrator of the
43 program pursuant to section 36-2903, subsection B, shall be as prescribed by
44 this chapter.

1 H. Arizona industries for the blind is exempt from this chapter for
2 purchases of finished goods from members of national industries for the blind
3 and for purchases of raw materials for use in the manufacture of products for
4 sale pursuant to section 41-1972. All other procurement shall be as
5 prescribed by this chapter.

6 I. Arizona correctional industries is exempt from this chapter for
7 purchases of raw materials, components and supplies that are used in the
8 manufacture or production of goods or services for sale entered into pursuant
9 to section 41-1622. All other procurement shall be as prescribed by this
10 chapter.

11 J. The state transportation board and the director of the department
12 of transportation are exempt from this chapter other than section 41-2586 for
13 the procurement of construction or reconstruction, including engineering
14 services, of transportation facilities or highway facilities and any other
15 services that are directly related to land titles, appraisals, real property
16 acquisition, relocation, property management or building facility design and
17 construction for highway development and that are required pursuant to title
18 28, chapter 20.

19 K. The Arizona highways magazine is exempt from this chapter for
20 contracts for the production, promotion, distribution and sale of the
21 magazine and related products and for contracts for sole source creative
22 works entered into pursuant to section 28-7314, subsection A, paragraph 5.
23 All other procurement shall be as prescribed by this chapter.

24 L. The secretary of state is exempt from this chapter for contracts
25 entered into pursuant to section 41-1012 to publish and sell the
26 administrative code. All other procurement shall be as prescribed by this
27 chapter.

28 M. This chapter is not applicable to contracts for professional
29 witnesses if the purpose of such contracts is to provide for professional
30 services or testimony relating to an existing or probable judicial proceeding
31 in which this state is or may become a party or to contract for special
32 investigative services for law enforcement purposes.

33 N. The head of any state governmental unit, in relation to any
34 contract exempted by this section from this chapter, has the same authority
35 to adopt rules, procedures or policies as is delegated to the director
36 pursuant to this chapter.

37 O. Agreements negotiated by legal counsel representing this state in
38 settlement of litigation or threatened litigation are exempt from this
39 chapter.

40 P. This chapter is not applicable to contracts entered into by the
41 department of economic security:

42 1. With a provider licensed or certified by an agency of this state to
43 provide child day care services or with a provider of family foster care
44 pursuant to section 8-503 or 36-554.

1 2. With area agencies on aging created pursuant to the older Americans
2 act of 1965 (P.L. 89-73; 79 Stat. 218; 42 United States Code sections 3001
3 through 3058ee).

4 3. For services pursuant to title 36, chapter 29, article 2.

5 4. With an eligible entity as defined by Public Law 105-285, section
6 673(1)(a)(i), as amended, for designated community services block grant
7 program monies and any other monies given to the eligible entity that
8 accomplishes the purpose of Public Law 105-285, section 672.

9 Q. The department of health services may not require that persons with
10 whom it contracts follow this chapter for the purposes of subcontracts
11 entered into for the provision of the following:

12 1. Mental health services pursuant to section 36-189, subsection B.

13 2. Services for the seriously mentally ill pursuant to title 36,
14 chapter 5, article 10.

15 3. Drug and alcohol services pursuant to section 36-141.

16 4. Domestic violence services pursuant to title 36, chapter 30,
17 article 1.

18 R. The department of health services is exempt from this chapter for
19 contracts for services of physicians at the Arizona state hospital.

20 S. Contracts for goods and services approved by the board of trustees
21 of the public safety personnel retirement system are exempt from this
22 chapter.

23 T. The Arizona department of agriculture is exempt from this chapter
24 with respect to contracts for private labor and equipment to effect cotton or
25 cotton stubble plow-up pursuant to rules adopted under title 3, chapter 2,
26 article 1. On or before September 1 of each year, the director of the
27 Arizona department of agriculture shall establish and announce costs for each
28 acre of cotton or cotton stubble to be abated by private contractors.

29 U. The Arizona state parks board is exempt from this chapter for
30 purchases of guest supplies and items for resale such as food, linens, gift
31 items, sundries, furniture, china, glassware and utensils for the facilities
32 located in the Tonto natural bridge state park.

33 V. The Arizona state parks board is exempt from this chapter for the
34 purchase, production, promotion, distribution and sale of publications,
35 souvenirs and sundry items obtained and produced for resale.

36 W. The Arizona state schools for the deaf and the blind are exempt
37 from this chapter when purchasing products through a cooperative that is
38 organized and operates in accordance with state law if such products are not
39 available on a statewide contract and are related to the operation of the
40 schools or are products for which special discounts are offered for
41 educational institutions.

42 X. Expenditures of monies in the morale, welfare and recreational fund
43 established by section 26-153 are exempt from this chapter.

44 Y. Notwithstanding section 41-2534, the director of the state
45 department of corrections may contract with local medical providers in

1 counties with a population of less than four hundred thousand persons
2 according to the most recent United States decennial census for the following
3 purposes:

4 1. To acquire hospital and professional medical services for inmates
5 who are incarcerated in state department of corrections facilities that are
6 located in those counties.

7 2. To ensure the availability of emergency medical services to inmates
8 in all counties by contracting with the closest medical facility that offers
9 emergency treatment and stabilization.

10 Z. The department of environmental quality is exempt from this chapter
11 for contracting for procurements relating to the water quality assurance
12 revolving fund program established pursuant to title 49, chapter 2,
13 article 5. The department shall engage in a source selection process that is
14 similar to the procedures prescribed by this chapter. The department may
15 contract for remedial actions with a single selection process. The exclusive
16 remedy for disputes or claims relating to contracting pursuant to this
17 subsection is as prescribed by article 9 of this chapter and the rules
18 adopted pursuant to that article. All other procurement by the department
19 shall be as prescribed by this chapter.

20 AA. The motor vehicle division of the department of transportation is
21 exempt from this chapter for third party authorizations pursuant to title 28,
22 chapter 13, only if all of the following conditions exist:

23 1. The division does not pay any public monies to an authorized third
24 party.

25 2. Exclusivity is not granted to an authorized third party.

26 3. The director has complied with the requirements prescribed in title
27 28, chapter 13 in selecting an authorized third party.

28 BB. This section does not exempt third party authorizations pursuant
29 to title 28, chapter 13 from any other applicable law.

30 CC. The state forester is exempt from this chapter for purchases and
31 contracts relating to wild land fire suppression and pre-positioning
32 equipment resources and for other activities related to combating wild land
33 fires and other unplanned risk activities, including fire, flood, earthquake,
34 wind and hazardous material responses. All other procurement by the state
35 forester shall be as prescribed by this chapter.

36 DD. The cotton research and protection council is exempt from this
37 chapter for procurements relating to its aflatoxin control program and for
38 contracts for research programs related to cotton production or protection.

39 EE. Expenditures of monies in the Arizona agricultural protection fund
40 established by section 3-3304 are exempt from this chapter.

41 Sec. 18. Section 41-4151, Arizona Revised Statutes, is amended to
42 read:

43 41-4151. Definitions

44 In this article, unless the context otherwise requires:

1 1. "Agency":

2 (a) Means any board, commission, department or other administrative
3 unit of this state established by the Constitution of Arizona or by enactment
4 of the legislature.

5 (b) Includes the legislature, the courts and the governor.

6 ~~(c) Does not include the state compensation fund.~~

7 2. "Agency web site" means an agency owned, operated or funded web
8 site connected to the internet and includes web sites accessed through the
9 "Arizona@yourservice" portal.

10 3. "Privacy policy statement" means a description of an agency's
11 information practices.

12 Sec. 19. Retroactivity

13 Section 20-367, Arizona Revised Statutes, as amended by this act,
14 applies retroactively to July 1, 2010.

15 Sec. 20. Effective date

16 Sections 1, 2 and 4 through 18 of this act are effective on January 1,
17 2013.