

State of Arizona
Senate
Fiftieth Legislature
First Regular Session
2011

SENATE BILL 1102

AN ACT

AMENDING SECTIONS 20-156, 20-363, 20-367, 23-901, 23-961, 23-962, 23-963 AND 23-966, ARIZONA REVISED STATUTES; AMENDING TITLE 23, CHAPTER 6, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTION 23-970; 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

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

	Minimum Assessment Amount	Maximum Assessment Amount
Insurers with total admitted assets of greater than \$1,000,000,000	\$15,000	\$22,500
Insurers with total admitted assets of at least \$200,000,000 but not more than \$1,000,000,000	\$ 5,000	\$ 7,500
Insurers with total admitted assets of at least \$100,000,000 but not more than \$199,999,999	\$ 3,000	\$ 4,500
Insurers with total admitted assets of at least \$50,000,000 but not more than \$99,999,999	\$ 1,500	\$ 2,250
Insurers with total admitted assets of at least \$25,000,000 but not more than \$49,999,999	\$ 500	\$ 750
Insurers with total admitted assets of not more than \$24,999,999	\$ 250	\$ 375

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

Sec. 2. Section 20-363, Arizona Revised Statutes, is amended to read:

20-363. Availability of services of rating organization to members

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

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

C. Any member or insurer may request that the director review the reasonableness of any rule or regulation in its application to members at a hearing held on at least ten days' written notice to the rating organization and to the member or insurer. If the director finds that the rule or regulation is unreasonable in its application, the director shall order that 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~~

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

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

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

(i) The sole proprietor of a business subject to this chapter may be deemed to be an employee entitled to the benefits provided by this chapter on written acceptance, by endorsement, at the discretion of the insurance carrier of an application for coverage by the sole proprietor. The basis for computing premium payments and compensation benefits for the sole proprietor shall be an assumed average monthly wage of not less than six hundred dollars nor more than the maximum wage provided by section 23-1041 and is subject to the discretionary approval of the insurance carrier. Any compensation for permanent partial or permanent total disability payable to the sole proprietor shall be computed on the lesser of the assumed monthly wage agreed 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~~ UNDER A PLAN
5 AVAILABLE FROM THE INSURANCE CARRIER WITH THE LARGEST ARIZONA WORKERS'
6 COMPENSATION MARKET SHARE AS REPORTED BY THE DEPARTMENT OF INSURANCE IN ITS
7 LAST ANNUAL REPORT during the preceding calendar year. The commission shall
8 adopt rules that shall specify ~~those~~ THE PREMIUM PLANS AND methods to be used
9 for the calculation of rates and premiums and that shall be the basis for the
10 taxes assessed to self-insured employers. The tax shall be not less than two
11 hundred fifty dollars per annum and shall be computed and collected by the
12 commission and paid to the state treasurer for the credit of the
13 administrative fund at a rate not exceeding three per cent to be fixed
14 annually by the industrial commission. The rate shall be no more than is
15 necessary to cover the actual expenses of the industrial commission in
16 carrying out its powers and duties under this title. Any quarterly payments
17 of tax pursuant to subsection L of this section shall be deducted from the
18 tax payable pursuant to this subsection.

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

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

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

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

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

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

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

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

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

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

Date _____

A. Any county, city, town, municipal corporation or school district shall insure in any manner prescribed by the terms of section 23-961. Effective July 1, 1983, this state through the department of administration shall self-insure its liability, if any, under chapter 5 of this title and this chapter without the necessity of complying with ~~the provisions of~~ section 23-961, subsection A, paragraph 2. On or before June 30, 1983, the state compensation fund and the department of administration shall enter into an interagency contract pursuant to title 11, chapter 7, article 3 for the return to this state of the reserves established and held by the state compensation fund for all claims against this state ~~which~~ **THAT** were incurred on or before that date. ~~The first five hundred thousand dollars of~~ These reserves ~~shall be credited to the workers' compensation liability loss 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. Title 23, chapter 6, article 4, Arizona Revised Statutes, is
6 amended by adding section 23-970, to read:

7 23-970. Misrepresentation of payroll, job description, job
8 function or loss history affecting premium payment;
9 violation; classification; penalty; civil action

10 A. IT IS UNLAWFUL FOR AN EMPLOYER TO WILFULLY MISREPRESENT TO AN
11 INSURANCE CARRIER THE AMOUNT OF PAYROLL, THE JOB DESCRIPTION OR JOB FUNCTION
12 OF AN EMPLOYEE, OR THE EMPLOYER'S LOSS HISTORY, ON WHICH THE PREMIUM FOR
13 WORKERS' COMPENSATION INSURANCE TO BE PAID TO THE INSURANCE CARRIER IS BASED.

14 B. AN EMPLOYER THAT VIOLATES SUBSECTION A IS GUILTY OF A CLASS 6
15 FELONY.

16 C. IN ADDITION TO THE PUNISHMENT THAT MAY BE IMPOSED PURSUANT TO
17 SUBSECTION B, AN EMPLOYER THAT VIOLATES SUBSECTION A IS LIABLE FOR A PENALTY
18 OF UP TO THREE TIMES THE AMOUNT OF THE DIFFERENCE IN PREMIUM PAID AND THE
19 AMOUNT THE EMPLOYER SHOULD HAVE PAID. THE PENALTY SHALL BE COLLECTED IN A
20 CIVIL ACTION BY THE INSURANCE CARRIER, IN ADDITION TO ANY OTHER DAMAGES THAT
21 ARE INCURRED BY THE INSURANCE CARRIER DUE TO THE MISREPRESENTATION, INCLUDING
22 COSTS AND ATTORNEY FEES. THE INSURANCE CARRIER SHALL INITIATE THE CIVIL
23 ACTION WITHIN FOUR YEARS AFTER THE DATE THE INSURANCE CARRIER KNEW OR WITH
24 THE EXERCISE OF REASONABLE DILIGENCE SHOULD HAVE KNOWN OF THE
25 MISREPRESENTATION. THE INSURANCE CARRIER MAY INITIATE THE CIVIL ACTION
26 REGARDLESS OF WHETHER A CRIMINAL ACTION IS BROUGHT AGAINST THE EMPLOYER.

27 Sec. 10. Repeal

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

29 Sec. 11. Section 23-1021, Arizona Revised Statutes, is amended to
30 read:

31 23-1021. Right of employee to compensation

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

40 ~~B. Every employee who is covered by insurance in the state~~
41 ~~compensation fund and who is injured by accident arising out of and in the~~
42 ~~course of employment, and the dependents of every such employee who is~~
43 ~~killed, provided the injury was not purposely self-inflicted, shall be paid~~
44 ~~such compensation from the state compensation fund for loss sustained on~~
45 ~~account of the injury and shall receive such medical, nurse and hospital~~

~~services and medicines, and such amount of funeral expenses in event of death, as provided in this chapter.~~

Sec. 12. Section 23-1026, Arizona Revised Statutes, is amended to read:

23-1026. Periodical medical examination of employee: effect of refusal or obstruction of examination or treatment

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

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

C. If the employee refuses to submit to the medical examination or obstructs the examination, his right to compensation shall be suspended until the examination has been made, and no compensation shall be payable during or for such period.

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

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

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

1 Sec. 13. Section 23-1029, Arizona Revised Statutes, is amended to
2 read:

3 23-1029. Repeal of chapter; effect on rights of parties

4 ~~A.~~ If the provisions of this chapter relative to compensation for
5 injuries to or death of workmen are repealed, and the injury or death has not
6 previously been compensated by lump payment or completed monthly payments,
7 the period intervening between the injury or death and the repeal shall not
8 be computed as a part of the time limited by law for the commencement of any
9 action relating to such injury or death. The action shall be commenced
10 within one year after the repeal and any amount paid as compensation shall be
11 deducted from the right of recovery.

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

14 Sec. 14. Section 23-1065, Arizona Revised Statutes, is amended to
15 read:

16 23-1065. Special fund; purposes; investment committee

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 employer or other person responsible for the payment of compensation.
2 Failure to obtain the written approval of the special fund shall not cause
3 the injured worker to lose any benefits but ends the special fund's liability
4 for reimbursement and makes the employer or carrier solely responsible for
5 the payment of the remaining benefits.

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

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

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

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

38 J. The special fund of the commission consists of all monies from
39 premiums and assessments, except penalties assessed pursuant to this chapter,
40 received and paid into the fund, property and securities acquired by the use
41 of monies in the fund, interest earned on monies in the fund and other monies
42 derived from the sale, use or lease of properties belonging to the fund. The
43 special fund created by this section shall be administered by the director of
44 the industrial commission, subject to the authority of the industrial
45 commission. The director of the commission with approval of the investment

1 committee, in the administration of the special fund, may provide loans,
2 subject to repayment, budgetary review and legislative appropriation, to the
3 administrative fund for the purposes and subject to section 23-1081, acquire
4 real property and acquire or construct a building or other improvements on
5 the real property as may be necessary to house, contain, furnish, equip and
6 maintain offices and space for departmental and operational facilities of the
7 commission. The commission when using space constructed pursuant to this
8 section shall make equal payments of rent on a semiannual basis, which shall
9 be deposited in the special fund. The investment committee shall determine
10 the amount of the rent, which must be at least equal to or greater than that
11 determined by the joint committee on capital review for buildings of similar
12 design and construction as provided by section 41-792.01.

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

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

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

26 2. Reimbursement for expenses pursuant to title 38, chapter 4,
27 article 2.

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

29 N. The investment committee shall periodically review and assess the
30 investment strategy.

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

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

41 Q. The investment committee may appoint a custodian for the
42 safekeeping of all or any portion of the investments owned by the special
43 fund of the commission and may register stocks, bonds and other investments
44 in the name of a nominee. Except for investments held by a custodian or in
45 the name of a nominee, all securities purchased pursuant to subsection O of

1 this section shall promptly be deposited with the state treasurer as
2 custodian thereof, who shall collect the dividends, interest and principal
3 thereof, and pay, when collected, into the special fund. The state treasurer
4 shall pay all vouchers drawn for the purchase of securities. The director
5 may sell any of the securities as the director deems appropriate, if
6 authorized by resolution of the investment committee, and the proceeds
7 therefrom shall be payable to the state treasurer for the account of the
8 special fund upon delivery of the securities to the purchaser or the
9 purchaser's agent.

10 Sec. 15. Section 23-1070, Arizona Revised Statutes, is amended to
11 read:

12 23-1070. Medical, surgical and hospital benefits provided by
13 employer

14 A. An employer, other than the state or a political subdivision
15 thereof, who secures compensation to his employees in the manner provided in
16 ~~either SECTION 23-961, subsection A, paragraph 1, or subsection A, paragraph~~
17 ~~2 of section 23-961~~, alone or jointly with other employers ~~may~~, in lieu of
18 making premium payments for medical, surgical and hospital benefits, ~~MAY~~
19 provide such benefits to injured employees and may collect one-half of the
20 cost thereof from his employees, not to exceed one dollar per month from any
21 employee, which may be deducted from the wages of the employee.

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

25 C. An employer who maintains a hospital for his employees or who
26 contracts with a physician for the hospital care of injured employees ~~shall~~,
27 on or before January 30 each year, ~~SHALL~~ make a verified written report to
28 the commission for the preceding year showing the total amount of hospital
29 fees collected and showing separately the amount contributed by the employees
30 and the amount contributed by the employers. The report shall also contain
31 an itemized account of the expenditures, investments or other disposition of
32 the fees, and a statement showing the balance remaining.

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

38 E. If the medical, surgical or hospital aid or treatment being
39 furnished by an employer is such that there is reasonable ground to believe
40 that the health, life or recovery of any employee is endangered or impaired
41 thereby, the commission ~~may~~, upon application of the employee or upon its own
42 motion, ~~MAY~~ order a change of physicians or other conditions. If the
43 employer fails to comply with the order promptly, the injured employee may
44 elect to have medical, surgical or hospital aid or treatment provided by or
45 through the ~~state compensation~~ SPECIAL fund ~~ESTABLISHED BY SECTION~~

1 23-1065. In that event the claim of the injured employee against the
2 employer shall be assigned to the ~~state compensation~~ SPECIAL fund for the
3 benefit thereof, and the ~~state compensation~~ SPECIAL fund shall furnish to the
4 insured employee medical, surgical or hospital aid or treatment as provided
5 in this chapter.

6 Sec. 16. Section 23-1091, Arizona Revised Statutes, is amended to
7 read:

8 23-1091. Assigned risk plan

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

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

16 C. The administrator may charge all insurers transacting workers'
17 compensation insurance in this state a reasonable fee to administer the
18 assigned risk plan. Each insurer shall pay a share of the fee based on the
19 insurer's share of the preceding calendar year's total net direct workers'
20 compensation and occupational disease compensation insurance premiums written
21 in this state.

22 D. The assigned risk plan administrator shall develop a plan of
23 operation and, on approval by the director of the department of insurance,
24 shall issue a directive for the equitable apportioning of assigned risks
25 among all the insurers, ~~including the state compensation fund~~. At any time,
26 the director of the department of insurance may require the assigned risk
27 plan administrator to amend the plan of operation. The plan shall include at
28 least the following:

29 1. A method for the administrator to select one or more insurers
30 transacting workers' compensation insurance in this state to act as servicing
31 carriers. An administrator that is an insurer may act as its own servicing
32 carrier. The administrator shall monitor the performance of the servicing
33 carriers and shall measure performance against the administrator's
34 established standards. A servicing carrier shall:

35 (a) Provide coverage for the risks placed in the assigned risk plan.

36 (b) Pay claims.

37 (c) Provide safety management services.

38 (d) Perform other activities that are related to the preliminary and
39 subsequent effectuation of the contract and that arise out of the contract,
40 including paying commissions to any licensed property and casualty agent or
41 broker in this state.

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

44 E. Unless the director ~~determines~~ DECIDES to use another method, the
45 rates used to determine the premiums of risks in the assigned risk plan are

1 the rates annually filed with the director of the department of insurance by
2 the designated rating organization pursuant to section 20-357, subsection B,
3 unless the director requires the use of rates from another rating
4 organization, plus a uniform percentage increase that applies to all
5 classifications, that is determined by the designated rating organization or,
6 if the director directs, another rating organization and that is subject to
7 approval by the director. The expected loss rates, ballast factors and other
8 factors for use with the uniform experience rating plan as described in title
9 20, chapter 2, article 4 and filed with the director also apply to experience
10 rated risks in the assigned risk plan.

11 F. Rating classifications used in the assigned risk plan shall conform
12 to the uniform classification plan. Subclassifications and rating rule
13 deviations shall not be used in the assigned risk plan.

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

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

20 I. An insurer that refuses to participate in the assigned risk plan
21 shall not be authorized to write workers' compensation coverage in this
22 state. If an insurer refuses to participate in the assigned risk plan after
23 being authorized to write workers' compensation coverage in this state, the
24 insurer's authorization shall be revoked. If an insurer withdraws from or is
25 terminated from writing workers' compensation coverage in this state, the
26 insurer remains responsible for all injuries sustained during the period of
27 coverage stated in the policies of that insurer.

28 Sec. 17. Section 41-791, Arizona Revised Statutes, is amended to read:

29 41-791. Powers and duties relating to public buildings
30 maintenance; compensation of personnel

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

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

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

36 2. The state office buildings in Tucson.

37 3. All other buildings owned or leased by the state and located near
38 the state capitol building and the state office buildings in Tucson, except
39 for:

40 (a) Buildings occupied, operated and maintained by the following state
41 agencies:

42 (i) The department of transportation.

43 (ii) The Arizona power authority.

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

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

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

7 (d) The Arizona courts building.

8 C. The department is responsible for the maintenance of the following
9 buildings and grounds:

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

11 2. The state office buildings in Tucson and the grounds adjacent to
12 them.

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

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

18 E. The department shall:

19 1. Employ engineers and maintenance and operations personnel as
20 required, including a buildings manager for the state office buildings in
21 Tucson.

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

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

25 Sec. 18. Section 41-2501, Arizona Revised Statutes, is amended to
26 read:

27 41-2501. Applicability

28 A. This chapter applies only to procurements initiated after January
29 1, 1985 unless the parties agree to its application to procurements initiated
30 before that date.

31 B. This chapter applies to every expenditure of public monies,
32 including federal assistance monies except as otherwise specified in section
33 41-2637, by this state, acting through a state governmental unit as defined
34 in this chapter, under any contract, except that this chapter does not apply
35 to either grants as defined in this chapter, or contracts between this state
36 and its political subdivisions or other governments, except as provided in
37 chapter 24 of this title and in article 10 of this chapter. This chapter
38 also applies to the disposal of state materials. This chapter and rules
39 adopted under this chapter do not prevent any state governmental unit or
40 political subdivision from complying with the terms of any grant, gift,
41 bequest or cooperative agreement.

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

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

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

8 F. The Arizona state lottery commission is exempt from this chapter
9 for procurement relating to the design and operation of the lottery or
10 purchase of lottery equipment, tickets and related materials. The executive
11 director of the Arizona state lottery commission shall adopt rules
12 substantially equivalent to the policies and procedures in this chapter for
13 procurement relating to the design and operation of the lottery or purchase
14 of lottery equipment, tickets or related materials. All other procurement
15 shall be as prescribed by this chapter.

16 G. The Arizona health care cost containment system administration is
17 exempt from this chapter for provider contracts pursuant to section 36-2904,
18 subsection A and contracts for goods and services, including program
19 contractor contracts pursuant to title 36, chapter 29, articles 2 and 3. All
20 other procurement, including contracts for the statewide administrator of the
21 program pursuant to section 36-2903, subsection B, shall be as prescribed by
22 this chapter.

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

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

33 J. The state transportation board and the director of the department
34 of transportation are exempt from this chapter other than section 41-2586 for
35 the procurement of construction or reconstruction, including engineering
36 services, of transportation facilities or highway facilities and any other
37 services that are directly related to land titles, appraisals, real property
38 acquisition, relocation, property management or building facility design and
39 construction for highway development and that are required pursuant to title
40 28, chapter 20.

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

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

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

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

14 O. Agreements negotiated by legal counsel representing this state in
15 settlement of litigation or threatened litigation are exempt from this
16 chapter.

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

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

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

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

26 4. With an eligible entity as defined by Public Law 105-285, section
27 673(1)(a)(i), as amended, for designated community services block grant
28 program monies and any other monies given to the eligible entity that
29 accomplishes the purpose of Public Law 105-285, section 672.

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

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

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

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

37 4. Domestic violence services pursuant to title 36, chapter 30,
38 article 1.

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

41 S. Contracts for goods and services approved by the board of trustees
42 of the public safety personnel retirement system are exempt from this
43 chapter.

44 T. The Arizona department of agriculture is exempt from this chapter
45 with respect to contracts for private labor and equipment to effect cotton or

1 cotton stubble plow-up pursuant to rules adopted under title 3, chapter 2,
2 article 1. On or before September 1 of each year, the director of the
3 Arizona department of agriculture shall establish and announce costs for each
4 acre of cotton or cotton stubble to be abated by private contractors.

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

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

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

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

20 Y. Notwithstanding section 41-2534, the director of the state
21 department of corrections may contract with local medical providers in
22 counties with a population of less than four hundred thousand persons
23 according to the most recent United States decennial census for the following
24 purposes:

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

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

31 Z. The department of environmental quality is exempt from this chapter
32 for contracting for procurements relating to the water quality assurance
33 revolving fund program established pursuant to title 49, chapter 2,
34 article 5. The department shall engage in a source selection process that is
35 similar to the procedures prescribed by this chapter. The department may
36 contract for remedial actions with a single selection process. The exclusive
37 remedy for disputes or claims relating to contracting pursuant to this
38 subsection is as prescribed by article 9 of this chapter and the rules
39 adopted pursuant to that article. All other procurement by the department
40 shall be as prescribed by this chapter.

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

44 1. The division does not pay any public monies to an authorized third
45 party.

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

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

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

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

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

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

17 Sec. 19. Section 41-4151, Arizona Revised Statutes, is amended to
18 read:

19 41-4151. Definitions

20 In this article, unless the context otherwise requires:

21 1. "Agency":

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

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

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

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

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

32 Sec. 20. Retroactivity

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

35 Sec. 21. Effective date

36 Sections 1, 2 and 4 through 19 of this act are effective on January 1,
37 2013.