

FILED

**Jane Dee Hull
Secretary of State**

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CHAPTER 232

HOUSE BILL 2174

AN ACT

AMENDING SECTIONS 23-902 AND 23-961, ARIZONA REVISED STATUTES; RELATING TO WORKERS' COMPENSATION.

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

2 Section 1. Section 23-902, Arizona Revised Statutes, is amended to
3 read:

4 23-902. Employers subject to chapter

5 A. Employers subject to the provisions of this chapter are the state,
6 each county, city, town, municipal corporation and school district and every
7 person who has in his employ any workers or operatives regularly employed in
8 the same business or establishment under contract of hire, except domestic
9 servants. Exempted employers of domestic servants may come under the
10 provisions of this chapter by complying with its provisions and the rules ~~and~~
11 ~~regulations~~ of the commission. For the purposes of this ~~section~~ SUBSECTION
12 "regularly employed" includes all employments, whether continuous throughout
13 the year, or for only a portion of the year, in the usual trade, business,
14 profession or occupation of an employer.

15 B. When an employer procures work to be done for him by a contractor
16 over whose work he retains supervision or control, and such work is a part
17 or process in the trade or business of the employer, then such contractors
18 and the persons employed by him, and his subcontractor and persons employed
19 by the subcontractor, are, within the meaning of this section, employees of
20 the original employer. For the purposes of this subsection, "part or process
21 in the trade or business of the employer" means a particular work activity

1 that in the context of an ongoing and integral business process is regular,
2 ordinary or routine in the operation of the business or is routinely done
3 through the business' own employees.

4 C. A person engaged in work for ~~another~~ A BUSINESS, and who while so
5 engaged is independent of ~~the employer~~ THAT BUSINESS in the execution of the
6 work and not subject to the rule or control of the ~~person~~ BUSINESS for whom
7 the work is done, but is engaged only in the performance of a definite job
8 or piece of work, and is subordinate to ~~the employer~~ THAT BUSINESS only in
9 effecting a result in accordance with ~~the employer's~~ THAT BUSINESS design,
10 is an independent contractor. ~~, and an employer within the meaning of this~~
11 ~~section.~~

12 D. A BUSINESS THAT USES THE SERVICES OF AN INDEPENDENT CONTRACTOR AND
13 THE INDEPENDENT CONTRACTOR MAY PROVE THE EXISTENCE OF AN INDEPENDENT
14 CONTRACTOR RELATIONSHIP BY EXECUTING A WRITTEN AGREEMENT THAT COMPLIES WITH
15 THIS SUBSECTION. THE WRITTEN AGREEMENT SHALL EVIDENCE THAT THE BUSINESS DOES
16 NOT HAVE THE AUTHORITY TO SUPERVISE OR CONTROL THE ACTUAL WORK OF THE
17 INDEPENDENT CONTRACTOR OR THE INDEPENDENT CONTRACTOR'S EMPLOYEES. A WRITTEN
18 AGREEMENT EXECUTED IN COMPLIANCE WITH THIS SUBSECTION CREATES A REBUTTABLE
19 PRESUMPTION OF AN INDEPENDENT CONTRACTOR RELATIONSHIP BETWEEN THE PARTIES IF
20 THE WRITTEN AGREEMENT CONTAINS A DISCLOSURE STATEMENT THAT THE INDEPENDENT
21 CONTRACTOR IS NOT ENTITLED TO WORKERS' COMPENSATION BENEFITS FROM THE
22 BUSINESS. UNLESS THE REBUTTABLE PRESUMPTION IS OVERCOME, NO PREMIUM MAY BE
23 COLLECTED BY THE CARRIER ON PAYMENTS BY THE BUSINESS TO THE INDEPENDENT
24 CONTRACTOR IF A FULLY COMPLETED WRITTEN AGREEMENT THAT SATISFIES THE
25 REQUIREMENTS OF THIS SUBSECTION IS SUBMITTED TO THE CARRIER. THE WRITTEN
26 AGREEMENT SHALL BE DATED AND CONTAIN THE SIGNATURES OF BOTH PARTIES AND,
27 UNLESS OTHERWISE PROVIDED BY LAW, SHALL STATE THAT THE BUSINESS:

28 1. DOES NOT REQUIRE THE INDEPENDENT CONTRACTOR TO PERFORM WORK
29 EXCLUSIVELY FOR THE BUSINESS. THIS PARAGRAPH SHALL NOT BE CONSTRUED AS
30 CONCLUSIVE EVIDENCE THAT AN INDIVIDUAL WHO PERFORMS SERVICES PRIMARILY OR
31 EXCLUSIVELY FOR ANOTHER PERSON IS AN EMPLOYEE OF THAT PERSON.

32 2. DOES NOT PROVIDE THE INDEPENDENT CONTRACTOR WITH ANY BUSINESS
33 REGISTRATIONS OR LICENSES REQUIRED TO PERFORM THE SPECIFIC SERVICES SET FORTH
34 IN THE CONTRACT.

35 3. DOES NOT PAY THE INDEPENDENT CONTRACTOR A SALARY OR HOURLY RATE
36 INSTEAD OF AN AMOUNT FIXED BY CONTRACT.

37 4. WILL NOT TERMINATE THE INDEPENDENT CONTRACTOR BEFORE THE EXPIRATION
38 OF THE CONTRACT PERIOD, UNLESS THE INDEPENDENT CONTRACTOR BREACHES THE
39 CONTRACT OR VIOLATES THE LAWS OF THIS STATE.

40 5. DOES NOT PROVIDE TOOLS TO THE INDEPENDENT CONTRACTOR.

41 6. DOES NOT DICTATE THE TIME OF PERFORMANCE.

42 7. PAYS THE INDEPENDENT CONTRACTOR IN THE NAME APPEARING ON THE
43 WRITTEN AGREEMENT.

1 1. One hundred thousand dollars.

2 2. The sum of subdivisions (a) and (b) of this paragraph less credits
3 for approved reinsurance computed as of the preceding December 31 for
4 workers' compensation insurance written subject to the laws of this state:

5 (a) The aggregate of the present values at six per cent interest of
6 the determined and estimated future direct reported loss and loss expense
7 payments on compensation claims incurred more than three years immediately
8 before the preceding December 31.

9 (b) The aggregate of the amounts determined for each of the three
10 years immediately before the preceding December 31 which equals the greater
11 of the following:

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

15 (ii) The present value at six per cent interest of the determined and
16 estimated future direct reported loss and loss expense payments on
17 compensation claims incurred in that year.

18 D. Securities deposited pursuant to subsection C of this section are
19 subject to approval by the director of insurance at all times. In lieu of
20 cash or securities the corporation or association may, with the annual
21 approval of the commission, furnish a bond of a corporate surety company
22 authorized to transact business in the state. The bond or securities shall
23 be held by the director of insurance as security for fulfillment of the
24 obligations of the corporation or association under this chapter.

25 E. Except in the event of nonpayment of premiums, each insurance
26 carrier shall carry a risk to the conclusion of the policy period unless the
27 policy is cancelled by the employer. The policy period shall be agreed upon
28 by the insurance carrier and the employer.

29 F. At least thirty days' notice shall be given by the insurance
30 carrier to the employer and to the commission of any cancellation or
31 nonrenewal of a policy if the cancellation or nonrenewal is at the election
32 of the insurance carrier. The insurance carrier shall promptly notify the
33 commission of any cancellation by the employer or failure of the employer to
34 renew the policy. The failure to give notice of nonrenewal if the nonrenewal
35 is at the election of the insurance carrier shall not extend coverage beyond
36 the policy period. The employer shall, prior to the effective date of any
37 cancellation or nonrenewal, file a certificate with the commission
38 designating his new insurance carrier or other satisfactory proof of
39 compliance with the requirements of this section. An insurance carrier shall
40 notify the commission on a form prescribed by the commission that it has
41 insured an employer for workers' compensation promptly after undertaking to
42 insure the employer.

43 G. Every insurance carrier, including the state compensation fund,
44 shall on or before March 1 of each year pay to the state treasurer for the

1 credit of the administrative fund, in lieu of all other taxes on workers'
2 compensation insurance, a tax of not more than three per cent on all premiums
3 collected or contracted for during the year ending December 31 next
4 preceding, less the following deductions from such total direct premiums—
5 FOR applicable cancellations, returned premiums and all policy dividends or
6 refunds paid or credited to policyholders within this state and not reapplied
7 as premiums for new, additional or extended insurance. Every self-insured
8 employer shall on or before March 31 of each year pay a tax of not more than
9 three per cent of the premiums which would have been paid by the employer if
10 he had been fully insured under a plan available from the state compensation
11 fund during the preceding calendar year. The commission shall adopt rules
12 which shall specify those methods to be used for the calculation of rates and
13 premiums and which shall be the basis for the taxes assessed to self-insured
14 employers. The tax shall be not less than two hundred fifty dollars per
15 annum and shall be computed and collected by the commission and paid to the
16 state treasurer for the credit of the administrative fund at a rate not
17 exceeding three per cent to be fixed annually by the industrial commission.
18 The rate shall be no more than is necessary to cover the actual expenses of
19 the industrial commission in carrying out its powers and duties under this
20 title. Any quarterly payments of tax pursuant to subsection H of this
21 section shall be deducted from the tax payable pursuant to this subsection.

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

32 I. Beginning February 1, 1986, if an overpayment of taxes results from
33 the method prescribed in subsection H of this section the industrial
34 commission may refund the overpayment without interest.

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

40 K. Neither the state compensation fund nor an insurance carrier
41 authorized to write workers' compensation insurance may assess an employer
42 premiums for services provided by a contractor alleged to be an employee
43 under the provisions of section 23-902, subsection B or C, unless the fund
44 or carrier has done both of the following:

