

State of Arizona
Senate
Forty-sixth Legislature
First Regular Session
2003

CHAPTER 180

SENATE BILL 1048

AN ACT

AMENDING SECTION 23-401, ARIZONA REVISED STATUTES; AMENDING SECTION 23-901, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2000, CHAPTER 280, SECTION 1 AND CHAPTER 393, SECTION 1; AMENDING SECTION 23-901, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2002, CHAPTER 331, SECTION 1; AMENDING SECTIONS 23-901.01, 23-901.04, 23-901.05 AND 23-901.06, ARIZONA REVISED STATUTES; AMENDING TITLE 23, CHAPTER 6, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 23-901.08; AMENDING SECTIONS 23-902, 23-907, 23-961 AND 23-1065, ARIZONA REVISED STATUTES; RELATING TO LABOR.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 23-401, Arizona Revised Statutes, is amended to
3 read:

4 23-401. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Board" means a review board established pursuant to section
7 23-422.

8 2. "Commission" means the industrial commission of Arizona.

9 3. "De minimis violation" means a condition or practice which,
10 although undesirable, has no direct or immediate relationship to safety or
11 health.

12 4. "Director" means the director of the division.

13 5. "Division" means the division of occupational safety and health
14 within the commission.

15 6. "Employee" means any person performing services for an employer,
16 including any person defined as an employee pursuant to section 23-901,
17 paragraph 5, except employees engaged in household domestic labor.

18 7. "Employer" means any individual or type of organization, including
19 the state and all its political subdivisions, which has in its employ one or
20 more individuals performing services for it in employment and includes
21 self-employed persons, but does not include employers of household domestic
22 labor.

23 8. "Interested party" means the commission and its agents, the
24 employer and the affected employees of such employer.

25 9. "Non-serious violation" means a condition or practice in a place
26 of employment which does not constitute a serious violation but which
27 violates a standard or regulation and has a direct or immediate relationship
28 to safety or health, unless the employer did not, and could not with the
29 exercise of reasonable diligence, know of the presence of such condition or
30 practice.

31 10. "Recognized hazard" means an unsafe or unhealthful condition or
32 practice recognized as such with respect to the standard of knowledge in the
33 industry.

34 11. "Regulation" means any written regulation of occupational safety
35 and health governing places of employment formulated pursuant to section
36 23-410, exclusive of standards, and shall have the same meaning as and
37 include the term "rule".

38 12. "Serious violation" means a condition or practice in a place of
39 employment which violates a standard, regulation or section 23-403,
40 subsection A and produces a substantial probability that death or serious
41 physical harm could result, unless the employer did not, and could not with
42 the exercise of reasonable diligence, know of the presence of such condition
43 or practice.

44 13. "Standard" means any occupational safety and health standard which
45 has been adopted and promulgated by a nationally recognized

1 standards-producing organization or the federal government and shall have the
2 same meaning as, and include the term "code".

3 14. "Trade secret" means a plan or process, tool, mechanism, or
4 compound not patented, known only to its owner and those of his employees to
5 whom it is necessary to confide it.

6 15. "Workplace" means a location or site wherein work, either temporary
7 or permanent, is being conducted in connection with an industry, trade or
8 business.

9 Sec. 2. Section 23-901, Arizona Revised Statutes, as amended by Laws
10 2000, chapter 280, section 1 and chapter 393, section 1, is amended to read:

11 23-901. Definitions

12 In this chapter, unless the context otherwise requires:

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

16 2. "CLIENT" MEANS AN INDIVIDUAL, ASSOCIATION, COMPANY, FIRM,
17 PARTNERSHIP, CORPORATION OR ANY OTHER LEGALLY RECOGNIZED ENTITY THAT IS
18 SUBJECT TO THE PROVISIONS OF THIS CHAPTER AND THAT ENTERS INTO A PROFESSIONAL
19 EMPLOYER AGREEMENT WITH A PROFESSIONAL EMPLOYER ORGANIZATION.

20 ~~2.~~ 3. "Co-employee" means every person employed by an injured
21 employee's employer.

22 ~~3.~~ 4. "Commission" means the industrial commission of Arizona.

23 ~~4.~~ 5. "Compensation" means the compensation and benefits provided by
24 this chapter.

25 ~~5.~~ 6. "Employee", "workman", "worker" and "operative" means:

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

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

33 (i) Casual.

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

36 (c) Lessees of mining property and their employees and contractors
37 engaged in the performance of work which is a part of the business conducted
38 by the lessor and over which the lessor retains supervision or control are
39 within the meaning of this paragraph employees of the lessor, and are deemed
40 to be drawing wages as are usually paid employees for similar work. The
41 lessor may deduct from the proceeds of ores mined by the lessees the premium
42 required by this chapter to be paid for such employees.

43 (d) Regular members of volunteer fire departments organized pursuant
44 to title 48, chapter 5, article 1, regular firemen of any volunteer fire
45 department, including private fire protection service organizations,

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

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

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

44 (g) Regular members of a volunteer sheriff's reserve, which may be
45 established by resolution of the county board of supervisors, to assist the

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

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

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

44 (j) A member of the Arizona national guard, Arizona state guard or
45 unorganized militia shall be deemed a state employee and entitled to coverage

1 under the Arizona workers' compensation law at all times while the member is
2 receiving the payment of the member's military salary from the state of
3 Arizona under competent military orders or upon order of the governor.
4 Compensation benefits shall be based upon the monthly military pay rate to
5 which the member is entitled at the time of injury, but not less than a
6 salary of four hundred dollars per month, nor more than the maximum provided
7 by the workers' compensation law. No Arizona compensation benefits shall
8 inure to a member compensable under federal law.

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

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

20 (m) Personnel who participate in a search or rescue operation or a
21 search or rescue training operation that carries a mission identifier
22 assigned by the division of emergency management as provided in section
23 35-192.01 and who serve without compensation as volunteer state employees.
24 The basis for computation of wages for premium purposes and compensation
25 benefits is the total volunteer man-hours recorded by the division of
26 emergency management in a given quarter multiplied by the amount determined
27 by the appropriate risk management formula.

28 (n) Personnel who participate in emergency management training,
29 exercises or drills that are duly enrolled or registered with the division
30 of emergency management or any political subdivision as provided in section
31 26-314, subsection C and who serve without compensation as volunteer state
32 employees. The basis for computation of wages for premium purposes and
33 compensation benefits is the total volunteer man-hours recorded by the
34 division of emergency management or political subdivision during a given
35 training session, exercise or drill multiplied by the amount determined by
36 the appropriate risk management formula.

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

42 (p) EVERY PERSON EMPLOYED PURSUANT TO A PROFESSIONAL EMPLOYER
43 AGREEMENT.

44 ~~6.~~ 7. "General order" means an order applied generally throughout the
45 state to all persons under jurisdiction of the commission.

1 ~~7.~~ 8. "Heart-related or perivascular injury, illness or death" means
2 myocardial infarction, coronary thrombosis or any other similar sudden,
3 violent or acute process involving the heart or perivascular system, or any
4 death resulting therefrom, and any weakness, disease or other condition of
5 the heart or perivascular system, or any death resulting therefrom.

6 ~~8.~~ 9. "Insurance carrier" means the state compensation fund and every
7 insurance carrier duly authorized by the director of insurance to write
8 workers' compensation or occupational disease compensation insurance in the
9 state of Arizona.

10 ~~9.~~ 10. "Interested party" means the employer, the employee, or if the
11 employee is deceased, the surviving spouse or dependents, the commission, the
12 insurance carrier or their representative.

13 ~~10.~~ 11. "Mental injury, illness or condition" means any mental,
14 emotional, psychotic or neurotic injury, illness or condition.

15 ~~11.~~ 12. "Order" means and includes any rule, direction, requirement,
16 standard, determination or decision other than an award or a directive by the
17 commission or an administrative law judge relative to any entitlement to
18 compensation benefits, or to the amount thereof, and any procedural ruling
19 relative to the processing or adjudicating of a compensation matter.

20 ~~12.~~ 13. "Personal injury by accident arising out of and in the course
21 of employment" means any of the following:

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

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

27 (c) An occupational disease which is due to causes and conditions
28 characteristic of and peculiar to a particular trade, occupation, process or
29 employment, and not the ordinary diseases to which the general public is
30 exposed, and subject to section 23-901.01.

31 14. "PROFESSIONAL EMPLOYER AGREEMENT" MEANS A WRITTEN CONTRACT BETWEEN
32 A CLIENT AND A PROFESSIONAL EMPLOYER ORGANIZATION:

33 (a) IN WHICH THE PROFESSIONAL EMPLOYER ORGANIZATION EXPRESSLY AGREES
34 TO CO-EMPLOY ALL OR A MAJORITY OF THE EMPLOYEES PROVIDING SERVICES FOR THE
35 CLIENT. IN DETERMINING WHETHER THE PROFESSIONAL EMPLOYER ORGANIZATION EMPLOYS
36 ALL OR A MAJORITY OF THE EMPLOYEES OF A CLIENT, ANY PERSON EMPLOYED PURSUANT
37 TO THE TERMS OF THE PROFESSIONAL EMPLOYER AGREEMENT AFTER THE INITIAL
38 PLACEMENT OF CLIENT EMPLOYEES ON THE PAYROLL OF THE PROFESSIONAL EMPLOYER
39 ORGANIZATION SHALL BE INCLUDED.

40 (b) THAT IS INTENDED TO BE ONGOING RATHER THAN TEMPORARY IN NATURE.

41 (c) IN WHICH EMPLOYER RESPONSIBILITIES FOR WORKSITE EMPLOYEES,
42 INCLUDING HIRING, FIRING AND DISCIPLINING, ARE EXPRESSLY ALLOCATED BETWEEN
43 THE PROFESSIONAL EMPLOYER ORGANIZATION AND THE CLIENT IN THE AGREEMENT.

44 15. "PROFESSIONAL EMPLOYER ORGANIZATION" MEANS ANY PERSON ENGAGED IN
45 THE BUSINESS OF PROVIDING PROFESSIONAL EMPLOYER SERVICES. PROFESSIONAL

1 EMPLOYER ORGANIZATION DOES NOT INCLUDE A TEMPORARY HELP FIRM OR AN EMPLOYMENT
2 AGENCY.

3 16. "PROFESSIONAL EMPLOYER SERVICES" MEANS THE SERVICE OF ENTERING INTO
4 CO-EMPLOYMENT RELATIONSHIPS UNDER THIS CHAPTER TO WHICH ALL OR A MAJORITY OF
5 THE EMPLOYEES PROVIDING SERVICES TO A CLIENT OR TO A DIVISION OR WORK UNIT
6 OF A CLIENT ARE COVERED EMPLOYEES.

7 ~~13.~~ 17. "Special order" means an order other than a general order.

8 ~~14.~~ 18. "State compensation fund" includes the state compensation
9 fund, accident benefit fund and occupational disease compensation fund in
10 existence on January 2, 1969 and shall thereafter include all funds under the
11 jurisdiction of the board of directors of the state compensation fund which
12 have been derived from the assessment of premiums, interest, penalties and
13 investment earnings for the payment of all workers' compensation and
14 occupational disease compensation benefits.

15 ~~15.~~ 19. "Weakness, disease or other condition of the heart or
16 perivascular system" means arteriosclerotic heart disease, cerebral vascular
17 disease, peripheral vascular disease, cardiovascular disease, angina
18 pectoris, congestive heart trouble, coronary insufficiency, ischemia and all
19 other similar weaknesses, diseases and conditions, and also previous episodes
20 or instances of myocardial infarction, coronary thrombosis or any similar
21 sudden, violent or acute process involving the heart or perivascular system.

22 ~~16.~~ 20. "Workers' compensation" means workmen's compensation as used
23 in article XVIII, section 8, Constitution of Arizona.

24 Sec. 3. Section 23-901, Arizona Revised Statutes, as amended by Laws
25 2002, chapter 331, section 1, is amended to read:

26 23-901. Definitions

27 In this chapter, unless the context otherwise requires:

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

31 2. "CLIENT" MEANS AN INDIVIDUAL, ASSOCIATION, COMPANY, FIRM,
32 PARTNERSHIP, CORPORATION OR ANY OTHER LEGALLY RECOGNIZED ENTITY THAT IS
33 SUBJECT TO THE PROVISIONS OF THIS CHAPTER AND THAT ENTERS INTO A PROFESSIONAL
34 EMPLOYER AGREEMENT WITH A PROFESSIONAL EMPLOYER ORGANIZATION.

35 ~~2.~~ 3. "Co-employee" means every person employed by an injured
36 employee's employer.

37 ~~3.~~ 4. "Commission" means the industrial commission of Arizona.

38 ~~4.~~ 5. "Compensation" means the compensation and benefits provided by
39 this chapter.

40 ~~5.~~ 6. "Employee", "workman", "worker" and "operative" means:

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

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

4 (i) Casual.

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

7 (c) Lessees of mining property and their employees and contractors
8 engaged in the performance of work which is a part of the business conducted
9 by the lessor and over which the lessor retains supervision or control are
10 within the meaning of this paragraph employees of the lessor, and are deemed
11 to be drawing wages as are usually paid employees for similar work. The
12 lessor may deduct from the proceeds of ores mined by the lessees the premium
13 required by this chapter to be paid for such employees.

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

34 (e) Members of the department of public safety reserve, organized
35 pursuant to section 41-1715, are deemed to be employees. For the purposes
36 of this chapter, the basis for computing wages for premium payments and
37 compensation benefits for a member of the department of public safety reserve
38 who is a peace officer shall be the salary received by officers of the
39 department of public safety for their first month of regular duty as an
40 officer. For members of the department of public safety reserve who are not
41 peace officers, the basis for computing premiums and compensation benefits
42 is four hundred dollars a month.

43 (f) Any person placed in on-the-job evaluation or in on-the-job
44 training under the department of economic security's temporary assistance for
45 needy families program or vocational rehabilitation program shall be deemed

1 to be an employee of the department for the purpose of coverage under the
2 state workers' compensation laws only. The basis for computing premium
3 payments and compensation benefits shall be two hundred dollars per month.
4 Any person receiving vocational rehabilitation services under the department
5 of economic security's vocational rehabilitation program whose major
6 evaluation or training activity is academic, whether as an enrolled attending
7 student or by correspondence, or who is confined to a hospital or penal
8 institution, shall not be deemed to be an employee of the department for any
9 purpose. Any dividend which the department's vocational rehabilitation
10 program may be entitled to receive from the state compensation fund because
11 of a favorable loss experience for any policy period shall not revert to the
12 state general fund but shall be applied to the department's current premium
13 obligations for workers' compensation coverage for such program.

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

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

1 (i) The sole proprietor of a business subject to this chapter may be
2 deemed to be an employee entitled to the benefits provided by this chapter
3 on written acceptance, by endorsement, at the discretion of the insurance
4 carrier of an application for coverage by the sole proprietor. The basis for
5 computing premium payments and compensation benefits for the sole proprietor
6 shall be an assumed average monthly wage of not less than six hundred dollars
7 nor more than the maximum wage provided by section 23-1041 and is subject to
8 the discretionary approval of the insurance carrier. Any compensation for
9 permanent partial or permanent total disability payable to the sole
10 proprietor shall be computed on the lesser of the assumed monthly wage agreed
11 to by the insurance carrier on the acceptance of the application for coverage
12 or the actual average monthly wage received by the sole proprietor at the
13 time of injury.

14 (j) A member of the Arizona national guard, Arizona state guard or
15 unorganized militia shall be deemed a state employee and entitled to coverage
16 under the Arizona workers' compensation law at all times while the member is
17 receiving the payment of the member's military salary from the state of
18 Arizona under competent military orders or upon order of the governor.
19 Compensation benefits shall be based upon the monthly military pay rate to
20 which the member is entitled at the time of injury, but not less than a
21 salary of four hundred dollars per month, nor more than the maximum provided
22 by the workers' compensation law. No Arizona compensation benefits shall
23 inure to a member compensable under federal law.

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

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

35 (m) Personnel who participate in a search or rescue operation or a
36 search or rescue training operation that carries a mission identifier
37 assigned by the division of emergency management as provided in section
38 35-192.01 and who serve without compensation as volunteer state employees.
39 The basis for computation of wages for premium purposes and compensation
40 benefits is the total volunteer man-hours recorded by the division of
41 emergency management in a given quarter multiplied by the amount determined
42 by the appropriate risk management formula.

43 (n) Personnel who participate in emergency management training,
44 exercises or drills that are duly enrolled or registered with the division
45 of emergency management or any political subdivision as provided in section

1 26-314, subsection C and who serve without compensation as volunteer state
2 employees. The basis for computation of wages for premium purposes and
3 compensation benefits is the total volunteer man-hours recorded by the
4 division of emergency management or political subdivision during a given
5 training session, exercise or drill multiplied by the amount determined by
6 the appropriate risk management formula.

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

12 (p) EVERY PERSON EMPLOYED PURSUANT TO A PROFESSIONAL EMPLOYER
13 AGREEMENT.

14 ~~6.~~ 7. "General order" means an order applied generally throughout the
15 state to all persons under jurisdiction of the commission.

16 ~~7.~~ 8. "Heart-related or perivascular injury, illness or death" means
17 myocardial infarction, coronary thrombosis or any other similar sudden,
18 violent or acute process involving the heart or perivascular system, or any
19 death resulting therefrom, and any weakness, disease or other condition of
20 the heart or perivascular system, or any death resulting therefrom.

21 ~~8.~~ 9. "Insurance carrier" means the state compensation fund and every
22 insurance carrier duly authorized by the director of insurance to write
23 workers' compensation or occupational disease compensation insurance in the
24 state of Arizona.

25 ~~9.~~ 10. "Interested party" means the employer, the employee, or if the
26 employee is deceased, the surviving spouse or dependents, the commission, the
27 insurance carrier or their representative.

28 ~~10.~~ 11. "Mental injury, illness or condition" means any mental,
29 emotional, psychotic or neurotic injury, illness or condition.

30 ~~11.~~ 12. "Order" means and includes any rule, direction, requirement,
31 standard, determination or decision other than an award or a directive by the
32 commission or an administrative law judge relative to any entitlement to
33 compensation benefits, or to the amount thereof, and any procedural ruling
34 relative to the processing or adjudicating of a compensation matter.

35 ~~12.~~ 13. "Personal injury by accident arising out of and in the course
36 of employment" means any of the following:

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

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

42 (c) An occupational disease which is due to causes and conditions
43 characteristic of and peculiar to a particular trade, occupation, process or
44 employment, and not the ordinary diseases to which the general public is
45 exposed, and subject to section 23-901.01.

1 14. "PROFESSIONAL EMPLOYER AGREEMENT" MEANS A WRITTEN CONTRACT BETWEEN
2 A CLIENT AND A PROFESSIONAL EMPLOYER ORGANIZATION:

3 (a) IN WHICH THE PROFESSIONAL EMPLOYER ORGANIZATION EXPRESSLY AGREES
4 TO CO-EMPLOY ALL OR A MAJORITY OF THE EMPLOYEES PROVIDING SERVICES FOR THE
5 CLIENT. IN DETERMINING WHETHER THE PROFESSIONAL EMPLOYER ORGANIZATION EMPLOYS
6 ALL OR A MAJORITY OF THE EMPLOYEES OF A CLIENT, ANY PERSON EMPLOYED PURSUANT
7 TO THE TERMS OF THE PROFESSIONAL EMPLOYER AGREEMENT AFTER THE INITIAL
8 PLACEMENT OF CLIENT EMPLOYEES ON THE PAYROLL OF THE PROFESSIONAL EMPLOYER
9 ORGANIZATION SHALL BE INCLUDED.

10 (b) THAT IS INTENDED TO BE ONGOING RATHER THAN TEMPORARY IN NATURE.

11 (c) IN WHICH EMPLOYER RESPONSIBILITIES FOR WORKSITE EMPLOYEES,
12 INCLUDING HIRING, FIRING AND DISCIPLINING, ARE EXPRESSLY ALLOCATED BETWEEN
13 THE PROFESSIONAL EMPLOYER ORGANIZATION AND THE CLIENT IN THE AGREEMENT.

14 15. "PROFESSIONAL EMPLOYER ORGANIZATION" MEANS ANY PERSON ENGAGED IN
15 THE BUSINESS OF PROVIDING PROFESSIONAL EMPLOYER SERVICES. PROFESSIONAL
16 EMPLOYER ORGANIZATION DOES NOT INCLUDE A TEMPORARY HELP FIRM OR AN EMPLOYMENT
17 AGENCY.

18 16. "PROFESSIONAL EMPLOYER SERVICES" MEANS THE SERVICE OF ENTERING INTO
19 CO-EMPLOYMENT RELATIONSHIPS UNDER THIS CHAPTER TO WHICH ALL OR A MAJORITY OF
20 THE EMPLOYEES PROVIDING SERVICES TO A CLIENT OR TO A DIVISION OR WORK UNIT
21 OF A CLIENT ARE COVERED EMPLOYEES.

22 ~~13.~~ 17. "Special order" means an order other than a general order.

23 ~~14.~~ 18. "State compensation fund" includes the state compensation
24 fund, accident benefit fund and occupational disease compensation fund in
25 existence on January 2, 1969 and shall thereafter include all funds under the
26 jurisdiction of the board of directors of the state compensation fund which
27 have been derived from the assessment of premiums, interest, penalties and
28 investment earnings for the payment of all workers' compensation and
29 occupational disease compensation benefits.

30 ~~15.~~ 19. "Weakness, disease or other condition of the heart or
31 perivascular system" means arteriosclerotic heart disease, cerebral vascular
32 disease, peripheral vascular disease, cardiovascular disease, angina
33 pectoris, congestive heart trouble, coronary insufficiency, ischemia and all
34 other similar weaknesses, diseases and conditions, and also previous episodes
35 or instances of myocardial infarction, coronary thrombosis or any similar
36 sudden, violent or acute process involving the heart or perivascular system.

37 ~~16.~~ 20. "Workers' compensation" means workmen's compensation as used
38 in article XVIII, section 8, Constitution of Arizona.

39 Sec. 4. Section 23-901.01, Arizona Revised Statutes, is amended to
40 read:

41 23-901.01. Occupational disease; proximate causation;
42 definition

43 A. The occupational diseases as defined by section 23-901, paragraph
44 ~~12~~ 13, subdivision (c) shall be deemed to arise out of the employment only
45 if all of the following six requirements exist:

1 1. There is a direct causal connection between the conditions under
2 which the work is performed and the occupational disease.

3 2. The disease can be seen to have followed as a natural incident of
4 the work as a result of the exposure occasioned by the nature of the
5 employment.

6 3. The disease can be fairly traced to the employment as the proximate
7 cause.

8 4. The disease does not come from a hazard to which workers would have
9 been equally exposed outside of the employment.

10 5. The disease is incidental to the character of the business and not
11 independent of the relation of employer and employee.

12 6. The disease after its contraction appears to have had its origin
13 in a risk connected with the employment, and to have flowed from that source
14 as a natural consequence, although it need not have been foreseen or
15 expected.

16 B. Notwithstanding subsection A of this section and section
17 23-1043.01, any disease, infirmity or impairment of a firefighter's health
18 that is caused by brain, bladder, rectal or colon cancer, lymphoma, leukemia
19 or aden carcinoma or mesothelioma of the respiratory tract and that results
20 in disability or death is presumed to be an occupational disease as defined
21 in section 23-901, paragraph ~~12~~ 13, subdivision (c) and is deemed to arise
22 out of employment. The presumption is granted if all of the following apply
23 to the firefighter:

24 1. The firefighter passed a physical examination before employment and
25 the examination did not indicate evidence of cancer.

26 2. The firefighter was assigned to hazardous duty for at least five
27 years.

28 3. The firefighter was exposed to a known carcinogen as defined by the
29 international agency for research on cancer, ~~AND~~ informed the department of
30 this exposure and the carcinogen is reasonably related to the cancer.

31 C. Subsection B of this section applies to former firefighters who are
32 sixty-five years of age or younger.

33 D. Subsection B of this section does not apply to cancers of the
34 respiratory tract if the firefighter has smoked tobacco products.

35 E. For purposes of this section, "firefighter" means a full-time
36 firefighter who was regularly assigned to hazardous duty.

37 Sec. 5. Section 23-901.04, Arizona Revised Statutes, is amended to
38 read:

39 23-901.04. Compensation precluded by misconduct, self-exposure
40 or disobedience of orders of commission;
41 self-exposure defined

42 A. Notwithstanding any other provision of this chapter, no employee
43 or dependent of an employee shall be entitled to receive compensation for
44 disability from an occupational disease, as defined by section 23-901,
45 paragraph ~~12~~ 13, subdivision (c), when such disability was caused either

1 wholly or partly by the wilful misconduct, wilful self-exposure or
2 disobedience to such reasonable rules and regulations adopted by the employer
3 and which have been and are kept posted in conspicuous places in and about
4 the premises of the employer, or otherwise brought to the attention of the
5 employee.

6 B. As used in this section the term "wilful self-exposure" includes:

7 1. Failure or omission on the part of an employee or applicant for
8 employment truthfully to state in writing to the best of his knowledge in
9 answer to an inquiry made by the employer, the place, duration and nature of
10 previous employment.

11 2. Failure or omission on the part of an applicant for employment
12 truthfully to state in writing to the best of his knowledge in answer to an
13 inquiry made by the employer, whether or not he had previously been disabled,
14 laid off or compensated in damages or otherwise because of any physical
15 disability.

16 3. Failure or omission on the part of an employee or applicant for
17 employment truthfully to give in writing to the best of his knowledge in
18 answer to an inquiry made by the employer, full information about the
19 previous status of his health, previous medical and hospital attention and
20 direct and continuous exposure to active pulmonary tuberculosis.

21 Sec. 6. Section 23-901.05, Arizona Revised Statutes, is amended to
22 read:

23 23-901.05. Occupational disease aggravated by other disease or
24 other disease aggravated by occupational disease;
25 effect on compensation

26 Where an occupational disease, as defined by section 23-901, paragraph
27 ~~12~~ 13, subdivision (c), is aggravated by any other disease or infirmity not
28 itself compensable, or where disability or death from any other cause not
29 itself compensable is aggravated, prolonged, accelerated or in anywise
30 contributed to by an occupational disease, the compensation payable under
31 this chapter shall be reduced and limited to such proportion only of the
32 compensation that would be payable if the occupational disease were the sole
33 cause of the disability or death, as such occupational disease as a causative
34 factor bears to all the causes of such disability or death.

35 Sec. 7. Section 23-901.06, Arizona Revised Statutes, is amended to
36 read:

37 23-901.06. Volunteer workers

38 In addition to persons defined as employees under section 23-901,
39 ~~paragraph 5,~~ volunteer workers of a county, city, town, or other political
40 subdivision of the state may be deemed to be employees and entitled to the
41 benefits provided by this chapter upon the passage of a resolution or
42 ordinance by the political subdivision defining the nature and type of
43 volunteer work and workers to be entitled to such benefits. The basis for
44 computing compensation benefits and premium payments shall be four hundred
45 dollars per month.

1 Sec. 8. Title 23, chapter 6, article 1, Arizona Revised Statutes, is
2 amended by adding section 23-901.08, to read:

3 23-901.08. Professional employer organizations

4 A. A PERSON ENGAGED IN THE BUSINESS OF PROVIDING PROFESSIONAL EMPLOYER
5 SERVICES IS SUBJECT TO THIS CHAPTER REGARDLESS OF WHETHER THE PERSON USES THE
6 TERM PROFESSIONAL EMPLOYER ORGANIZATION, PEO, STAFF LEASING COMPANY,
7 REGISTERED STAFF LEASING COMPANY, EMPLOYEE LEASING COMPANY OR ANY OTHER NAME.

8 B. AS LONG AS THE PROFESSIONAL EMPLOYER ORGANIZATION'S PROFESSIONAL
9 EMPLOYER AGREEMENT WITH A CLIENT REMAINS IN FORCE, THE PROFESSIONAL EMPLOYER
10 ORGANIZATION SHALL BE REGARDED AS A CO-EMPLOYER OF THE EMPLOYEE.

11 C. THE PROFESSIONAL EMPLOYER ORGANIZATION AND ITS CLIENT SHALL BE
12 CONSIDERED THE EMPLOYER FOR THE PURPOSE OF COVERAGE UNDER THIS CHAPTER AND
13 BOTH THE PROFESSIONAL EMPLOYER ORGANIZATION AND ITS CLIENT SHALL BE ENTITLED
14 TO PROTECTION OF THE EXCLUSIVE REMEDY SET FORTH IN SECTION 23-1022. BOTH THE
15 PROFESSIONAL EMPLOYER ORGANIZATION AND ITS CLIENT SHALL COMPLY WITH THE
16 PROVISIONS OF SECTIONS 23-906 AND 23-964. THE REQUIREMENTS OF SECTION
17 23-1021, SUBSECTION F SHALL BE SATISFIED IF EITHER THE PROFESSIONAL EMPLOYER
18 ORGANIZATION OR ITS CLIENT FILES THE REQUIRED WRITTEN CERTIFICATION WITH THE
19 COMMISSION.

20 D. WHEN A PROFESSIONAL EMPLOYER ORGANIZATION ENTERS INTO A
21 PROFESSIONAL EMPLOYER AGREEMENT WITH A CLIENT IN ARIZONA, THE PROFESSIONAL
22 EMPLOYER ORGANIZATION SHALL NOTIFY ITS WORKERS' COMPENSATION INSURANCE
23 CARRIER AND THE COMMISSION. THE NOTIFICATION SHALL BE ON A FORM APPROVED BY
24 THE COMMISSION AND SHALL INCLUDE THE FOLLOWING INFORMATION:

25 1. THE NAME AND BUSINESS ADDRESS OF THE CLIENT EMPLOYER.

26 2. WHETHER ALL OR A MAJORITY OF THE CLIENT EMPLOYER'S WORKFORCE IS
27 COVERED BY THE PROFESSIONAL EMPLOYER AGREEMENT.

28 3. UNLESS ALL OF THE CLIENT EMPLOYER'S WORKFORCE IS COVERED BY THE
29 PROFESSIONAL EMPLOYER AGREEMENT, THE NAME OF THE CLIENT EMPLOYER'S WORKERS'
30 COMPENSATION INSURANCE CARRIER THAT IS INSURING THE CLIENT EMPLOYER'S
31 OBLIGATION TO SECURE COMPENSATION UNDER SECTION 23-961 FOR ANY EMPLOYEES WHO
32 ARE NOT COVERED BY THE PROFESSIONAL EMPLOYER AGREEMENT. THE PROFESSIONAL
33 EMPLOYER ORGANIZATION SHALL ALSO NOTIFY EACH CLIENT, IN WRITING, OF THE
34 CLIENT'S OBLIGATION UNDER SECTION 23-961 TO SECURE WORKERS' COMPENSATION FOR
35 ANY EMPLOYEES WHO ARE NOT COVERED BY THE PROFESSIONAL EMPLOYER AGREEMENT,
36 EVEN IF SUCH EMPLOYEES ARE HIRED AFTER THE EXECUTION OF THE PROFESSIONAL
37 EMPLOYER AGREEMENT.

38 E. IF A PROFESSIONAL EMPLOYER AGREEMENT IS TERMINATED, THE
39 PROFESSIONAL EMPLOYER ORGANIZATION SHALL IMMEDIATELY NOTIFY ITS WORKERS'
40 COMPENSATION INSURANCE CARRIER AND THE COMMISSION, IN WRITING, OF THE NAME
41 OF THE CLIENT AND THE DATE OF TERMINATION OF THE AGREEMENT.

42 Sec. 9. Section 23-902, Arizona Revised Statutes, is amended to read:

43 23-902. Employers subject to chapter; exceptions

44 A. Employers subject to the provisions of this chapter are the state,
45 each county, city, town, municipal corporation and school district and every

1 person who employs any workers or operatives regularly employed in the same
2 business or establishment under contract of hire INCLUDING COVERED EMPLOYEES
3 PURSUANT TO A PROFESSIONAL EMPLOYER AGREEMENT, except domestic servants.
4 Exempted employers of domestic servants may come under the provisions of this
5 chapter by complying with its provisions and the rules of the
6 commission. For the purposes of this subsection "regularly employed"
7 includes all employments, whether continuous throughout the year, or for only
8 a portion of the year, in the usual trade, business, profession or occupation
9 of an employer.

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

20 C. A person engaged in work for a business, and who while so engaged
21 is independent of that business in the execution of the work and not subject
22 to the rule or control of the business for which the work is done, but is
23 engaged only in the performance of a definite job or piece of work, and is
24 subordinate to that business only in effecting a result in accordance with
25 that business design, is an independent contractor.

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

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

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

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

6 4. Will not terminate the independent contractor before the expiration
7 of the contract period, unless the independent contractor breaches the
8 contract or violates the laws of this state.

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

10 6. Does not dictate the time of performance.

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

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

15 E. A business that uses the services of a sole proprietor who has
16 waived the sole proprietor's rights to workers' compensation coverage and
17 benefits pursuant to section 23-961, subsection M is not liable for workers'
18 compensation coverage or the payment of premiums for the sole proprietor.

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

22 1. Obtained through misrepresentation, false statements, fraud or
23 intimidation.

24 2. Obtained through coercion or duress.

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

27 Sec. 10. Section 23-907, Arizona Revised Statutes, is amended to read:

28 23-907. Liability of employer failing to secure compensation;
29 defenses; presumption; right of employee to
30 compensation under chapter; information exchange;
31 civil penalties; settlement of disputed claim

32 A. Employers who are subject to and who fail to comply with the
33 ~~provisions of~~ section 23-961 or 23-962 shall not be entitled to the benefits
34 of this chapter during the period of noncompliance, but shall be liable in
35 an action under any other applicable law of the state. In such action the
36 defendant shall not avail himself of the defenses of assumption of risk or
37 contributory negligence. In all such actions proof of the injury shall
38 constitute prima facie evidence of negligence on the part of the employer and
39 the burden shall be upon the employer to show freedom from negligence
40 resulting in the injury.

41 B. An employee of such an employer, or the employee's dependents in
42 case death ensued, ~~may~~, in lieu of proceeding against the employer by civil
43 action in court, MAY file his AN application with the commission for
44 compensation in accordance with the ~~provisions of~~ this chapter, and the
45 commission shall hear and determine the application for compensation in the

1 manner other claims are heard and determined before the commission. EXCEPT
2 FOR A PROTEST OF COMPENSABILITY, AN EMPLOYER WHO PROTESTS OR PETITIONS THE
3 COMMISSION FOR RELIEF OF ACTIONS OR DETERMINATIONS MADE BY THE SPECIAL FUND
4 ESTABLISHED BY SECTION 23-1065 SHALL BE IN COMPLIANCE WITH SECTION 23-961 OR
5 23-962. THE EMPLOYER'S PROTEST OR PETITION SHALL INCLUDE PROOF THAT THE
6 EMPLOYER IS COMPLYING WITH SECTION 23-961 OR 23-962. THE PROOF SHALL BE
7 EITHER A COPY OF THE DECLARATION PAGE OF THE WORKERS' COMPENSATION INSURANCE
8 POLICY UNDER SECTION 23-961, SUBSECTION A, PARAGRAPH 1 OR A NOTICE TO THE
9 COMMISSION THAT THE EMPLOYER IS IN GOOD STANDING WITH THE COMMISSION UNDER
10 SECTION 23-961, SUBSECTION A, PARAGRAPH 2. The compensation so determined
11 shall be paid from the special fund established by section 23-1065 to the
12 person entitled thereto after a finding and award for benefits has been
13 issued and becomes final AS PROVIDED IN THIS SECTION.

14 C. THE SPECIAL FUND MAY BEGIN THE PAYMENT OF MEDICAL OR COMPENSATION
15 BENEFITS ON A CLAIM WHICH INVOLVES AN EMPLOYER WHO HAS FAILED TO SECURE
16 COMPENSATION AS REQUIRED BY SECTION 23-961 AND WHICH IS PROCESSED UNDER
17 SUBSECTION B OF THIS SECTION, PENDING FINALITY OF A NOTICE, A DETERMINATION,
18 AN ORDER, OR A FINDING AND AWARD ON A CLAIM CONDITION OR OTHER MATTER
19 ACCEPTED BY THE SPECIAL FUND. AFTER PAYMENT BEGINS, THE PAYMENT SHALL NOT
20 BE INTERRUPTED IF THERE IS A PROTEST, PETITION FOR HEARING, REQUEST FOR
21 REVIEW OR APPEAL TO A HIGHER COURT BY AN EMPLOYER UNLESS, BEFORE A NOTICE,
22 DETERMINATION OR ORDER IS FINAL, THE SPECIAL FUND ISSUES A NOTICE,
23 DETERMINATION OR ORDER THAT RESCINDS OR AMENDS ITS PRIOR ACTION OR TERMINATES
24 THE PAYMENT OF MEDICAL OR COMPENSATION BENEFITS. ANY OVERPAYMENT OF MEDICAL
25 OR COMPENSATION BENEFITS THAT OCCURS SHALL BE CREDITED OR ADJUSTED AGAINST
26 ANY FUTURE LIABILITY ON THE SAME CLAIM. ANY OVERPAYMENT OF MEDICAL OR
27 COMPENSATION BENEFITS TO A CLAIMANT FOR A CLAIM, CONDITION OR MATTER THAT IS
28 FINALLY DETERMINED TO BE NONCOMPENSABLE SHALL BE BORNE BY THE SPECIAL FUND.

29 D. THE COMMISSION MAY SPEND MONIES FROM THE SPECIAL FUND THAT RELATE
30 TO A CLAIM UNDER THIS SECTION AND SHALL INCLUDE AS PART OF AN EMPLOYER'S
31 LIABILITY UNDER THIS SECTION THOSE EXPENDITURES FOR THE EMPLOYMENT OR
32 CONTRACTING OF MEDICAL, REHABILITATION OR LABOR MARKET CONSULTANTS, EXPERTS
33 OR EXAMINERS THAT ARE NECESSARY FOR PROCESSING AND DETERMINING BENEFITS AND
34 ASSISTING IN DETERMINING THE LIABILITY OF THE SPECIAL FUND ON A CLAIM.

35 E. The employer shall be notified of his THE EMPLOYER'S liability
36 to the special fund periodically and this notice shall include a ten per cent
37 penalty of the amount expended by the special fund or a penalty of five
38 hundred ONE THOUSAND dollars, whichever is greater, plus interest on the
39 amount expended and the penalty pursuant to section 44-1201. The payments
40 made from the special fund pursuant to the award plus the penalty shall act
41 as a judgment against the employer. The commission shall file the award in
42 the office of the clerk of the superior court in any county in the state and
43 such award shall be entered in the civil order book and judgment docket and
44 when so filed and entered shall be a lien for eight years from the date of
45 the award upon the property of the employer located in the county. Execution

1 may issue thereon within eight years in the same manner and with like effect
2 as if the award were a judgment of the superior court. The commission may
3 recover reasonable attorney fees incurred pursuant to this section. Any
4 civil penalties and interest assessed pursuant to this section shall be
5 deposited, pursuant to sections 35-146 and 35-147, in the state general fund
6 and any payments and attorney fees shall be deposited in the special fund
7 account.

8 ~~D.~~ F. An employer with one or more employees who is required to
9 comply with the provisions of this chapter but who fails to obtain coverage
10 through an insurance carrier or as a self-insurer shall be subject to an
11 action by the commission to apply to the court for an injunction which shall
12 cause the employer to cease the operation of his business until such employer
13 complies with the provisions of law pertaining thereto.

14 ~~E.~~ G. The commission and other state and local governmental agencies
15 may exchange information concerning employers who fail to comply with section
16 23-961 or 23-962 with other federal, state or local governmental
17 agencies. This exchange of information shall be made only for the purpose
18 of the valid administrative needs of the programs administered by the
19 commission or other agencies and shall not be made for the purpose of
20 criminal prosecution of an employer.

21 ~~F.~~ H. The commission may assess a civil penalty of five hundred ONE
22 THOUSAND dollars on an uninsured employer if the commission makes an award
23 for a noncompensable claim for a claim against the employer and finds that:

24 1. At the time of the accident for which the claim was made the
25 employer was subject to this chapter.

26 2. The employer was not insured pursuant to this chapter.

27 ~~G.~~ I. The commission may issue an order assessing a civil penalty of
28 not to exceed five hundred ONE THOUSAND dollars on an employer who is subject
29 to this chapter and who is not insured pursuant to this chapter. The order
30 is final against the employer unless the employer requests a hearing before
31 the commission within fifteen working days after a copy of the order is
32 mailed to the employer. THE EMPLOYER'S REQUEST FOR HEARING SHALL SPECIFY THE
33 FACTS AND GROUNDS THAT ARE THE BASIS OF THE EMPLOYER'S OBJECTION TO THE ORDER
34 ISSUED UNDER THIS SUBSECTION. Following the hearing the commission may
35 affirm, reverse or modify its order and shall serve a copy of its decision
36 by regular FIRST CLASS mail on the employer. An employer aggrieved by this
37 decision may seek judicial review pursuant to title 12, chapter 7, article
38 6.

39 J. IF THE COMMISSION HAS ASSESSED A CIVIL PENALTY UNDER THIS SECTION
40 AGAINST AN EMPLOYER WITHIN THE PREVIOUS FIVE YEARS FOR FAILURE TO SECURE
41 WORKERS' COMPENSATION AS REQUIRED UNDER THIS CHAPTER, THE COMMISSION MAY
42 ASSESS AN ADDITIONAL CIVIL PENALTY AGAINST THE EMPLOYER THAT:

43 1. DOES NOT EXCEED FIVE THOUSAND DOLLARS FOR THE SECOND FAILURE TO
44 SECURE THE PAYMENT OF COMPENSATION.

1 2. DOES NOT EXCEED TEN THOUSAND DOLLARS FOR A THIRD OR SUBSEQUENT
2 FAILURE TO SECURE THE PAYMENT OF COMPENSATION. AS AN AGGRAVATING FACTOR
3 ONLY, THE COMMISSION MAY CONSIDER THE ECONOMIC BENEFIT THAT THE EMPLOYER
4 RECEIVED BY FAILING TO COMPLY WITH THIS CHAPTER.

5 K. IN DETERMINING THE AMOUNT OF THE FINAL PENALTY UNDER SUBSECTION H,
6 I OR J OF THIS SECTION, THE COMMISSION MAY CONSIDER ANY RELEVANT FACTOR TO
7 WAIVE OR REDUCE THE PENALTY, INCLUDING:

8 1. THE HISTORY OF THE EMPLOYER'S NONCOMPLIANCE WITH SECTION 23-961 OR
9 23-962.

10 2. THE HISTORY OF NO INSURANCE CLAIMS FILED AGAINST THE EMPLOYER.

11 3. WHETHER THE FAILURE TO SECURE WORKERS' COMPENSATION COVERAGE WAS
12 INADVERTENT. FOR THE PURPOSES OF THIS PARAGRAPH, "INADVERTENT" INCLUDES A
13 LAPSE IN COVERAGE OF NOT MORE THAN THIRTY DAYS IF THERE IS A CHANGE OF
14 INSURANCE CARRIER, A CHANGE OF OWNERSHIP OR A CHANGE IN THE FORM OF THE
15 BUSINESS.

16 4. WHETHER THE FAILURE TO SECURE WORKERS' COMPENSATION COVERAGE WAS
17 BECAUSE THE EMPLOYER WAS A VICTIM OF FRAUD, MISREPRESENTATION OR GROSS
18 NEGLIGENCE BY AN INSURANCE AGENT OR BROKER OR BY A PERSON WHOM A REASONABLE
19 PERSON WOULD BELIEVE IS AN INSURANCE AGENT OR BROKER.

20 H. L. Civil penalties assessed pursuant to subsections ~~F and G~~ H, I
21 AND J of this section are payable to the state general fund and shall act as
22 a judgment in the same manner as prescribed in subsection ~~G~~ E of this
23 section. Recovery of attorney fees and accrual of interest are the same as
24 prescribed in subsection ~~G~~ E of this section.

25 I. M. The commission may compromise or otherwise settle a disputed
26 claim with an employee of an employer who is subject to and who fails to
27 comply with the provisions of section 23-961 or 23-962 by filing a notice of
28 compromise and settlement or notice of stipulation with the presiding
29 administrative law judge. The notice shall be served on the employer at the
30 last known mailing address as shown on the records of the commission. The
31 employer shall keep the commission informed of its current mailing address
32 once the employer has been notified by the commission of the filing of a
33 claim against the employer. If the employer does not request a hearing
34 protesting the terms of the agreement or stipulation within ten working days
35 of the service of the notice, the commission and the employee may execute the
36 agreement or stipulation without the consent of the employer, subject to the
37 approval of the presiding administrative law judge. Any payments made to the
38 employee pursuant to this subsection shall be paid from the special fund and
39 are subject to reimbursement and collection from the employer in the same
40 manner as other payments made pursuant to this chapter.

41 Sec. 11. Section 23-961, Arizona Revised Statutes, is amended to read:

42 23-961. Methods of securing compensation by employers; deficit
43 premium

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

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

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

17 B. An employer may not secure compensation to comply with this chapter
18 by any mechanism other than as provided in this section. No insurance,
19 combination or other program may be marketed, offered or sold as workers'
20 compensation that does not comply with this section. An employer violates
21 this chapter if an THE employer purchases or secures its obligations under
22 this chapter through a substitute for workers' compensation that does not
23 comply with this section.

24 C. Corporations or associations transacting the business of workers'
25 compensation insurance in the state shall be subject to the rules of the
26 director of insurance, including rates to be charged and policy forms to be
27 used. Their liability shall include a reinsurance reserve which shall equal
28 sixty-five per cent of the gross annual premiums or deposits received by the
29 corporation or association on account of workers' compensation insurance, and
30 fifty per cent of the gross annual premiums on all other lines of insurance
31 and a pro rata amount of gross premiums collected for more than one year.

32 D. Before transacting such business, the corporation or association
33 and the state compensation fund shall deposit with the state treasurer,
34 through the director of insurance, cash or securities in an amount equal to
35 the greater of the following amounts:

36 1. One hundred thousand dollars.

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

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

1 (b) The aggregate of the amounts determined for each of the three
2 years immediately before the preceding December 31 which equals the greater
3 of the following:

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

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

10 E. Securities deposited pursuant to subsection D of this section are
11 subject to approval by the director of insurance at all times. In lieu of
12 cash or securities the corporation or association may, with the annual
13 approval of the commission, furnish a bond of a corporate surety company
14 authorized to transact business in the state. The bond or securities shall
15 be held by the director of insurance as security for fulfillment of the
16 obligations of the corporation or association under this chapter.

17 F. Except in the event of nonpayment of premiums, each insurance
18 carrier shall carry a risk to the conclusion of the policy period unless the
19 policy is cancelled by the employer OR UNLESS ONE OR BOTH OF THE PARTIES TO
20 A PROFESSIONAL EMPLOYER AGREEMENT TERMINATE THE AGREEMENT. The policy period
21 shall be agreed upon by the insurance carrier and the employer.

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

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

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

11 I. Any insurer which, pursuant to this section, paid or is required
12 to pay a tax of two thousand dollars or more for the preceding calendar year
13 shall file a quarterly report, in a form prescribed by the commission,
14 accompanied by a payment in an amount equal to the tax due at the rates
15 prescribed in subsection H of this section for premiums determined pursuant
16 to subsection H of this section or an amount equal to twenty-five per cent
17 of the tax paid or required to be paid pursuant to subsection H of this
18 section for the preceding calendar year. The quarterly payments shall be due
19 and payable on or before the last day of the month following the close of the
20 quarter and shall be made to the state treasurer.

21 J. If an overpayment of taxes results from the method prescribed in
22 subsection I of this section the industrial commission may refund the
23 overpayment without interest.

24 K. An insurer who fails to pay the tax prescribed by subsection H or
25 I of this section or the amount prescribed by section 23-1065, subsection A
26 is subject to a civil penalty equal to the greater of twenty-five dollars or
27 five per cent of the tax or amount due plus interest at the rate of one per
28 cent per month from the date the tax or amount was due.

29 L. Neither the state compensation fund nor an insurance carrier
30 authorized to write workers' compensation insurance may assess an employer
31 premiums for services provided by a contractor alleged to be an employee
32 under section 23-902, subsection B or C, unless the fund or carrier has done
33 both of the following:

34 1. Prepared written audit or field investigation findings establishing
35 that all applicable factors for determining employment status under section
36 23-902 have been met.

37 2. Provided a copy of such findings to the employer in advance of
38 assessing a premium.

39 M. Notwithstanding section 23-901, paragraph 5- 6, subdivision (i),
40 a sole proprietor may waive the sole proprietor's rights to workers'
41 compensation coverage and benefits if both the sole proprietor and the
42 insurance carrier of the employer subject to this chapter for which the sole
43 proprietor performs services sign and date a waiver which is substantially
44 in the following form:

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

Sole proprietor

Date

Insurance carrier

Date

Sec. 12. Section 23-1065, Arizona Revised Statutes, is amended to read:

23-1065. Special fund; purposes; investment committee

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

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

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

1 employer or carrier is responsible under this paragraph shall be calculated
2 solely on physical, medically rated permanent impairment and not on
3 occupational or other factors.

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

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

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

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

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

38 (a) Epilepsy.

39 (b) Diabetes.

40 (c) Cardiac disease.

41 (d) Arthritis.

42 (e) Amputated foot, leg, arm or hand.

43 (f) Loss of sight of one or both eyes or a partial loss of uncorrected
44 vision of more than seventy-five per cent bilaterally.

45 (g) Residual disability from poliomyelitis.

- 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
26 or C of this section not later than the time the employer or insurance
27 carrier notifies the commission pursuant to section 23-1047, subsection A.
28 Upon 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
34 is any dispute regarding liability to the special fund pursuant to subsection
35 B 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 is primarily liable shall pay the entire amount of
40 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
2 compensation. Failure to obtain the written approval of the special fund
3 shall not cause the injured worker to lose any benefits but ends the special
4 fund's liability for reimbursement and makes the employer or carrier solely
5 responsible for 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
10 31 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 H- I of this section, the commission may, after notice and a
14 hearing, MAY levy an additional assessment under subsection A of this section
15 of up to one-half per cent to meet such liabilities. Any insurance carrier
16 or employer who may be adversely affected by the additional assessment may
17 at 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 the ~~provisions of~~ subsection A of this section, the
25 commission retains jurisdiction to amend, alter or change the award upon a
26 change in the physical condition of the injured employee resulting from the
27 injury.

28 H. ON RECEIVING NOTICE THAT THE SPECIAL FUND MAY BE LIABLE UNDER
29 CHAPTER 6 OF THIS TITLE, THE COMMISSION MAY SPEND MONIES FROM THE SPECIAL
30 FUND ESTABLISHED BY THIS SECTION FOR EXPENSES THAT ARE NECESSARY TO ASSIST
31 IN THE PROCESSING, PAYMENT OR DETERMINATION OF LIABILITY OF THE FUND. THESE
32 EXPENSES MAY INCLUDE TRAVEL, DISCOVERY PROCEDURES AND EMPLOYING ANY LEGAL,
33 MEDICAL, REHABILITATION, CLAIMS OR LABOR MARKET CONSULTANT, EXAMINER OR
34 EXPERT.

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

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

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

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

25 ~~K.~~ L. Each member of the investment committee, other than the
26 director of the commission, is eligible to receive from the special fund:

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

29 2. Reimbursement for expenses pursuant to title 38, chapter 4,
30 article 2.

31 ~~L.~~ M. The investment committee shall meet at least once every month.

32 ~~M.~~ N. The investment committee shall periodically review and assess
33 the investment strategy.

34 ~~N.~~ O. The investment committee may, by resolution, MAY invest and
35 reinvest the surplus or reserves in the funds established under this chapter
36 in any legal investments authorized under section 38-719.

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

1 P. Q. The investment committee may appoint a custodian for the
2 safekeeping of all or any portion of the investments owned by the special
3 fund of the commission and may register stocks, bonds and other investments
4 in the name of a nominee. Except for investments held by a custodian or in
5 the name of a nominee, all securities purchased pursuant to subsection N- 0
6 of this section shall promptly be deposited with the state treasurer as
7 custodian thereof, who shall collect the dividends, interest and principal
8 thereof, and pay, when collected, into the special fund. The state treasurer
9 shall pay all vouchers drawn for the purchase of securities. The director
10 may sell any of the securities as the director deems appropriate, if
11 authorized by resolution of the investment committee, and the proceeds
12 therefrom shall be payable to the state treasurer for the account of the
13 special fund upon delivery of the securities to the purchaser or the
14 purchaser's agent.

15 Sec. 13. Delayed effective date

16 Section 23-901, Arizona Revised Statutes, as amended by Laws 2002,
17 chapter 331, section 1 and as amended by section 3 of this act, is effective
18 from and after December 31, 2003.

APPROVED BY THE GOVERNOR MAY 9, 2003.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 9, 2003.

Passed the House April 7, 20 03,

by the following vote: 59 Ayes,

0 Nays, 1 Not Voting

Jake Elake
Speaker of the House

Norman L. Moore
Chief Clerk of the House

Passed the Senate February 19, 20 03,

by the following vote: 28 Ayes,

0 Nays, 2 Not Voting

Klu Bennett
President of the Senate

Charmine Billington
Secretary of the Senate

**EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR**

This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20____,

at _____ o'clock _____ M.

Governor of Arizona

S.B. 1048

**EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE**

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary of State

SENATE CONCURS IN HOUSE AMENDMENTS
AND FINAL PASSAGE

Passed the Senate May 5, 2003

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

[Signature]
President of the Senate
[Signature]
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

5 day of May, 2003

at 2:30 o'clock P. M.

[Signature]
Secretary to the Governor

Approved this 9 day of

May, 2003,

at 2⁴⁵ o'clock P. M.

[Signature]
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 9 day of May, 2003

at 4:15 o'clock P. M.

[Signature]
Secretary of State

S.B. 1048