

Conference Engrossed

State of Arizona
Senate
Forty-sixth Legislature
Second Regular Session
2004

CHAPTER 307

SENATE BILL 1256

AN ACT

AMENDING SECTIONS 23-902, 23-961, 23-966, 23-1065 AND 23-1081, ARIZONA
REVISED STATUTES; RELATING TO WORKERS' COMPENSATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)



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; exceptions

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 employs any workers or operatives regularly employed in the same
8 business or establishment under contract of hire, including covered employees
9 pursuant to a professional employer agreement, except domestic servants.
10 Exempted employers of domestic servants may come under the provisions of this
11 chapter by complying with its provisions and the rules of the
12 commission. For the purposes of this subsection "regularly employed"
13 includes all employments, whether continuous throughout the year, or for only
14 a portion of the year, in the usual trade, business, profession or occupation
15 of an employer.

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

26 C. A person engaged in work for a business, and who while so engaged
27 is independent of that business in the execution of the work and not subject
28 to the rule or control of the business for which the work is done, but is
29 engaged only in the performance of a definite job or piece of work, and is
30 subordinate to that business only in effecting a result in accordance with
31 that business design, is an independent contractor.

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

1 agreement shall be dated and contain the signatures of both parties and,
2 unless otherwise provided by law, shall state that the business:

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

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

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

12 4. Will not terminate the independent contractor before the expiration
13 of the contract period, unless the independent contractor breaches the
14 contract or violates the laws of this state.

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

16 6. Does not dictate the time of performance.

17 7. Pays the independent contractor in the name appearing on the
18 written agreement.

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

21 E. A business that uses the services of a sole proprietor who has
22 waived the sole proprietor's rights to workers' compensation coverage and
23 benefits pursuant to section 23-961, subsection M- 0 is not liable for
24 workers' compensation coverage or the payment of premiums for the sole
25 proprietor.

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

29 1. Obtained through misrepresentation, false statements, fraud or
30 intimidation.

31 2. Obtained through coercion or duress.

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

34 Sec. 2. Section 23-961, Arizona Revised Statutes, is amended to read:
35 23-961. Methods of securing compensation by employers; deficit

36 premium

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

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

42 2. By furnishing to the commission satisfactory proof of financial
43 ability to pay the compensation directly or through a workers' compensation
44 pool approved by the commission in the amount and manner and when due as
45 provided in this chapter. The requirements of this paragraph may be

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

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

17 ~~C. Corporations or associations transacting INSURANCE CARRIERS THAT~~
18 ~~TRANSACT the business of workers' compensation insurance in the THIS state~~
19 ~~shall be subject to the rules of the director of insurance. , including~~
20 ~~rates to be charged and policy forms to be used. Their liability shall~~
21 ~~include a reinsurance reserve which shall equal sixty-five per cent of the~~
22 ~~gross annual premiums or deposits received by the corporation or association~~
23 ~~on account of workers' compensation insurance, and fifty per cent of the~~
24 ~~gross annual premiums on all other lines of insurance and a pro rata amount~~
25 ~~of gross premiums collected for more than one year.~~

26 ~~D. Before transacting such business, the corporation or association~~
27 ~~and the state compensation fund shall deposit THE DIRECTOR OF INSURANCE SHALL~~
28 ~~NOT ISSUE TO AN INSURANCE CARRIER A CERTIFICATE OF AUTHORITY THAT AUTHORIZES~~
29 ~~THE INSURANCE CARRIER TO TRANSACT WORKERS' COMPENSATION INSURANCE UNTIL THE~~
30 ~~INSURER DEPOSITS with the state treasurer, through the director of insurance,~~
31 ~~cash or securities. in an amount THE STATE COMPENSATION FUND SHALL ALSO~~
32 ~~DEPOSIT CASH OR SECURITIES WITH THE STATE TREASURER, THROUGH THE DIRECTOR OF~~
33 ~~INSURANCE, BEFORE TRANSACTING THE BUSINESS OF WORKER'S COMPENSATION~~
34 ~~INSURANCE. THE AMOUNT OF CASH OR SECURITIES REQUIRED UNDER THIS SUBSECTION~~
35 ~~SHALL BE AT LEAST equal to 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 OR OTHER
39 TIME AS REQUESTED BY THE DEPARTMENT OF INSURANCE for workers' compensation
40 insurance written subject to the laws of this state:

41 (a) The aggregate of the present values at six per cent interest of
42 the ALL determined and estimated future direct reported loss and loss expense
43 payments on compensation claims incurred more than three years immediately
44 before the preceding December 31 OR OTHER TIME AS REQUESTED BY THE DEPARTMENT
45 OF INSURANCE.

1 (b) The aggregate of the amounts determined for each of the three
2 years immediately before the preceding December 31 OR OTHER TIME AS REQUESTED
3 BY THE DEPARTMENT OF INSURANCE which equals the greater 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 ALL determined
8 and estimated future direct reported loss and loss expense payments on
9 compensation claims incurred in that year.

10 E. ON OR BEFORE APRIL 15 AND ON ANY TIME THAT THE DEPARTMENT OF
11 INSURANCE SPECIFICALLY REQUESTS, AN INSURANCE CARRIER SHALL FILE WITH THE
12 DEPARTMENT OF INSURANCE THE INFORMATION NECESSARY TO COMPUTE THE REQUIRED
13 AMOUNT TO BE DEPOSITED PURSUANT TO SUBSECTION D OF THIS SECTION AND SHALL
14 DEPOSIT ANY REQUIRED ADDITIONAL AMOUNT.

15 F. AN INSURANCE CARRIER SHALL MAINTAIN AT ALL TIMES A DEPOSIT OF CASH
16 OR SECURITIES WITH THE STATE TREASURER, THROUGH THE DIRECTOR OF INSURANCE,
17 IN AN AMOUNT THAT IS NOT LESS THAN THE AMOUNT REQUIRED UNDER THIS SECTION.

18 ~~F. G. CASH OR securities deposited pursuant to subsection D of this~~
19 ~~section are subject to approval by the director of insurance at all times.~~
20 ~~In lieu of cash or securities the corporation or association may, with the~~
21 ~~annual approval of the commission, furnish a bond of a corporate surety~~
22 ~~company authorized to transact business in the state. The bond THE DIRECTOR~~
23 ~~OF INSURANCE SHALL HOLD THE CASH or securities shall be held by the director~~
24 ~~of insurance as security for fulfillment of the obligations of the~~
25 ~~corporation or association INSURANCE CARRIER, INCLUDING AN INSURANCE CARRIER~~
26 ~~ACTING AS A REINSURER, under this chapter. THE COMMISSION SHALL HAVE A LIEN~~
27 ~~AGAINST THE CASH OR SECURITIES DEPOSITED TO THE EXTENT THE SPECIAL FUND IS~~
28 ~~LIABLE TO PAY THE OBLIGATIONS SECURED BY THE CASH OR SECURITIES.~~

29 F. H. Except in the event of nonpayment of premiums, each insurance
30 carrier shall carry a risk to the conclusion of the policy period unless the
31 policy is cancelled by the employer or unless one or both of the parties to
32 a professional employer agreement terminate the agreement. The policy period
33 shall be agreed upon by the insurance carrier and the employer.

34 ~~G. I. At least thirty days' notice shall be given by the insurance~~
35 ~~carrier to the employer and to the commission of any cancellation or~~
36 ~~nonrenewal of a policy if the cancellation or nonrenewal is at the election~~
37 ~~of the insurance carrier. The insurance carrier shall promptly notify the~~
38 ~~commission of any cancellation by the employer or failure of the employer to~~
39 ~~renew the policy. The failure to give notice of nonrenewal if the nonrenewal~~
40 ~~is at the election of the insurance carrier shall not extend coverage beyond~~
41 ~~the policy period. An insurance carrier shall notify the commission on a~~
42 ~~form prescribed by the commission that it has insured an employer for~~
43 ~~workers' compensation promptly after undertaking to insure the employer.~~

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

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

33 ~~J~~ L. If an overpayment of taxes results from the method prescribed
34 in subsection ~~I~~ K of this section the industrial commission may refund the
35 overpayment without interest.

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

42 ~~L~~ N. Neither the state compensation fund nor an insurance carrier
43 authorized to write workers' compensation insurance may assess an employer
44 premiums for services provided by a contractor alleged to be an employee

1 under section 23-902, subsection B or C, unless the fund or carrier has done
2 both of the following:

3 1. Prepared written audit or field investigation findings establishing
4 that all applicable factors for determining employment status under section
5 23-902 have been met.

6 2. Provided a copy of such findings to the employer in advance of
7 assessing a premium.

8 M. 0. Notwithstanding section 23-901, paragraph 6, subdivision (i),
9 a sole proprietor may waive the sole proprietor's rights to workers'
10 compensation coverage and benefits if both the sole proprietor and the
11 insurance carrier of the employer subject to this chapter for which the sole
12 proprietor performs services sign and date a waiver which is substantially
13 in the following form:

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

22 _____
23 Sole proprietor Date
24 _____
25 Insurance carrier Date

26 Sec. 3. Section 23-966, Arizona Revised Statutes, is amended to read:
27 23-966. Failure of employer or insurance carrier to pay claim
28 or comply with commission order; reimbursement of
29 funds

30 A. If an insurance carrier or self-insured employer OR OTHER EMPLOYER
31 AUTHORIZED BY THE COMMISSION TO PROCESS OR PAY CLAIMS DIRECTLY PURSUANT TO
32 THIS CHAPTER does not fully comply with the provisions of the workers'
33 compensation law relating to the payment of compensation, medical benefits
34 or the final orders of the commission, the WORKERS' COMPENSATION claims for
35 compensation shall be assigned by the commission to the state compensation
36 fund, and the manager of the state compensation fund shall PROCESS THE CLAIMS
37 AND pay such compensation, benefits or amounts due ON BEHALF OF AND UNDER THE
38 DIRECTION OF THE SPECIAL FUND ESTABLISHED BY SECTION 23-1065. THE SPECIAL
39 FUND SHALL PERIODICALLY, BUT NOT LESS FREQUENTLY THAN QUARTERLY, REIMBURSE
40 the state compensation fund shall have a claim against the insurance carrier
41 or self-insured employer amount for the COMPENSATION, BENEFITS OR AMOUNTS so
42 paid to be recovered, together with REASONABLE ADMINISTRATIVE costs,
43 necessary expenses and a reasonable attorney's fee fixed by the court, and
44 such recovery shall be made upon the bond and other assets of the carrier or
45 self-insured employer filed under section 23-961 ATTORNEY FEES.

1 ~~B. The commission shall provide by regulation for the special award~~
2 ~~fund created by section 23-1065 to reimburse, on a periodic basis, the state~~
3 ~~compensation fund for any net loss, including reasonable administrative~~
4 ~~costs, it incurs under this section.~~

5 B. IN ADDITION TO ANY REIMBURSEMENT AUTHORIZED UNDER SUBSECTION A OF
6 THIS SECTION, THE SPECIAL FUND MAY USE MONIES FOR ANY EXPENSE OR SERVICE THAT
7 IS NECESSARY TO ASSIST IN THE DETERMINATION OF LIABILITY OF A CLAIM THAT IS
8 ASSIGNED UNDER THIS SECTION OR COLLECTED AGAINST THE CASH, SECURITIES, BOND
9 AND OTHER ASSETS OF THE INSURANCE CARRIER OR EMPLOYER. THESE EXPENSES MAY
10 INCLUDE TRAVEL, DISCOVERY PROCEDURES AND EMPLOYING ANY EXPERT, CONSULTANT OR
11 PROFESSIONAL, INCLUDING AN ATTORNEY, AUDITOR, EXAMINER OR ACTUARY.

12 C. THE SPECIAL FUND SHALL HAVE A CLAIM AGAINST THE INSURANCE CARRIER
13 OR EMPLOYER FOR ALL MONIES THAT ARE SPENT OR ANTICIPATED TO BE SPENT UNDER
14 THIS SECTION, INCLUDING ADMINISTRATIVE COSTS, NECESSARY EXPENSES AND ATTORNEY
15 FEES. ANY CLAIM BY THE SPECIAL FUND SHALL BE MADE ON THE CASH, SECURITIES
16 OR BOND FILED UNDER SECTION 23-961 OR APPLICABLE RULES OR ON ANY OTHER ASSET
17 OF THE INSURANCE CARRIER OR EMPLOYER.

18 D. The commission may increase the assessment established in section
19 23-1065 by not to exceed one-half of one per cent of such assessment in any
20 one year to reimburse the ~~state compensation~~ SPECIAL fund for its net loss
21 incurred under this section.

22 Sec. 4. Section 23-1065, Arizona Revised Statutes, is amended to read:
23 23-1065. Special fund; purposes; investment committee

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

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

44 1. The employer in whose employ the subsequent impairment occurred or
45 its insurance carrier is solely responsible for all temporary disability

1 compensation to which the employee is entitled and for an amount equal to the
2 permanent disability compensation provided by section 23-1044, subsection B
3 for the subsequent impairment. If the employee is determined to have
4 sustained no loss of earning capacity after the medically stationary date,
5 the employer or carrier shall pay him as a vocational rehabilitation bonus
6 the amount calculated under this paragraph as a lump sum, which shall be a
7 credit against any permanent compensation benefits awarded in any subsequent
8 proceeding. The amount of the vocational rehabilitation bonus for which the
9 employer or carrier is responsible under this paragraph shall be calculated
10 solely on physical, medically rated permanent impairment and not on
11 occupational or other factors.

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

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

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

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

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

45 (a) Epilepsy.

- 1 (b) Diabetes.
- 2 (c) Cardiac disease.
- 3 (d) Arthritis.
- 4 (e) Amputated foot, leg, arm or hand.
- 5 (f) Loss of sight of one or both eyes or a partial loss of uncorrected
- 6 vision of more than seventy-five per cent bilaterally.
- 7 (g) Residual disability from poliomyelitis.
- 8 (h) Cerebral palsy.
- 9 (i) Multiple sclerosis.
- 10 (j) Parkinson's disease.
- 11 (k) Cerebral vascular accident.
- 12 (l) Tuberculosis.
- 13 (m) Silicosis.
- 14 (n) Psychoneurotic disability following treatment in a recognized
- 15 medical or mental institution.
- 16 (o) Hemophilia.
- 17 (p) Chronic osteomyelitis.
- 18 (q) Hyperinsulinism.
- 19 (r) Muscular dystrophies.
- 20 (s) Arteriosclerosis.
- 21 (t) Thrombophlebitis.
- 22 (u) Varicose veins.
- 23 (v) Heavy metal poisoning.
- 24 (w) Ionizing radiation injury.
- 25 (x) Compressed air sequelae.
- 26 (y) Ruptured intervertebral disk.

27 4. The employer or carrier and the special fund are equally
28 responsible for the amount of compensation for loss of earning capacity under
29 section 23-1044, subsection C or permanent total disability under section
30 23-1045, subsection B.

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

44 E. If the special fund created by this section is determined to be
45 liable under either subsection B or C of this section, the employer or

1 insurance carrier which is primarily liable shall pay the entire amount of
2 the award to the injured employee and the commission shall by rule provide
3 for the reimbursement of the employer or insurance carrier on an annual
4 basis. In any case arising out of subsection B or C of this section, the
5 written approval of the special fund is required for the compromise of any
6 claim made pursuant to section 23-1023. In any such case, written approval
7 shall not be unreasonably withheld by the special fund, carrier, self-insured
8 employer or other person responsible for the payment of
9 compensation. Failure to obtain the written approval of the special fund
10 shall not cause the injured worker to lose any benefits but ends the special
11 fund's liability for reimbursement and makes the employer or carrier solely
12 responsible for the payment of the remaining benefits.

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

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

34 H. On receiving notice that the special fund may be liable under THIS
35 chapter ~~6 of this title~~, the commission may spend monies from the special
36 fund established by this section for expenses that are necessary to assist
37 in the processing, payment or determination of liability of the fund. These
38 expenses may include travel, discovery procedures and employing any legal,
39 medical, rehabilitation, claims or labor market consultant, examiner or
40 expert.

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

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

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

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

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

34 2. Reimbursement for expenses pursuant to title 38, chapter 4,
35 article 2.

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

37 N. The investment committee shall periodically review and assess the
38 investment strategy.

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

42 P. In addition to the investments authorized under section 38-719, the
43 investment committee may approve the investment in real property and
44 improvements on real property to house and maintain offices of the
45 commission, including spaces for its departmental and operational facilities.

1 Title to the real estate and improvements on the real estate vests in the
2 special fund of the commission, and the assets become part of the fund as
3 provided by this section.

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

18 Sec. 5. Section 23-1081, Arizona Revised Statutes, is amended to read:
19 23-1081. Administrative fund; purposes and administration

20 A. The administrative fund is established to provide for all expenses
21 of the industrial commission in carrying out its powers and duties under the
22 provisions of this title. Except for monies from cash deposits or surety
23 bonds in the separate account established by section 23-527, the
24 administrative fund and expenditures therefrom shall be subject to budgetary
25 review and legislative appropriation as expenditures from other state funds.
26 Vouchers or claims prepared for any purpose other than for payment of
27 benefits shall be processed as prescribed by section 35-181.01 and the rules
28 of the director of the department of administration. The industrial
29 commission shall annually fix the rate of the tax, not to exceed three per
30 cent, to be paid to the state treasurer for credit to the administrative fund
31 pursuant to section 23-961, subsection H- J in an amount that is no more than
32 necessary to cover the actual expenses of the industrial commission in
33 carrying out its powers and duties under this title. Monies for expenditure
34 from the administrative fund shall be appropriated by the legislature. All
35 money and securities in the fund shall be held in trust and invested by the
36 treasurer.

37 B. The administrative fund shall be no less than self-supporting with
38 respect to the expenses of the industrial commission and other expenditures
39 from the administrative fund as provided under this chapter. Any surplus or
40 deficit in the revenue provided under section 23-961 above or below the
41 expenses of the industrial commission and other expenditures from the
42 administrative fund as provided under this chapter shall be included in the
43 calculation of the rate to be fixed for the following year pursuant to
44 section 23-961, subsection H- J.

1 Sec. 6. Continued application of department of insurance
2 practices

3 Until further legislation relating to approved reinsurance under
4 section 23-961, Arizona Revised Statutes, is enacted, the department of
5 insurance shall continue to apply and enforce its interpretations and
6 practices regarding approved reinsurance under section 23-961, Arizona
7 Revised Statutes, as those interpretations and practices existed on December
8 31, 2003.

9 Sec. 7. Transition and implementation; applicability

10 A. Employees of the industrial commission of Arizona, the special fund
11 and the state compensation fund shall jointly develop and implement a
12 transition process to implement the provisions of section 23-966, Arizona
13 Revised Statutes, as amended by this act, including any appropriate
14 interagency agreement or other agreements.

15 B. Subject to the transition process described in subsection A, the
16 provisions of section 23-966, Arizona Revised Statutes, as amended by this
17 act apply to the assignment of any workers' compensation claim of an
18 insurance carrier or employer before or after the effective date of the
19 provisions of section 23-966, Arizona Revised Statutes, as amended by this
20 act if the claim does not fully comply with the provisions of the workers'
21 compensation law that relate to the payment of compensation, medical benefits
22 or final orders of the industrial commission of Arizona.

23 C. For claims that were previously assigned to the state compensation
24 fund for which the state compensation fund has made a claim against the cash,
25 securities, bond or other assets of the insurance carrier or employer, the
26 special fund shall have the same rights as the state compensation fund
27 against these claims, including the right to file an amended or supplemental
28 proof of claim. If the special fund is prohibited from exercising these
29 rights, the state compensation fund shall continue, on behalf of the special
30 fund, to pursue the claim against the cash, securities, bond or other assets
31 of the insurance carrier or employer.

APPROVED BY THE GOVERNOR JUNE 1, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JUNE 1, 2004.



Passed the House April 20, 20 04

by the following vote: 55 Ayes,

0 Nays, 5 Not Voting

Jake Fluke
Speaker of the House

Norman L. Moore
Chief Clerk of the House

Passed the Senate March 16, 20 04

by the following vote: 30 Ayes,

0 Nays, 0 Not Voting

Kyle Flinn
President of the Senate

Charmine Bellington
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. 1256

**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

HOUSE FINAL PASSAGE
as per Joint Conference

Passed the House May 24, 2004,

by the following vote: 53 Ayes,

1 Nays, 6 Not Voting

Jake Flake
Speaker of the House

Spencer L. Moore
Chief Clerk of the House

SENATE FINAL PASSAGE
as per Joint Conference

Passed the Senate May 19, 2004,

by the following vote: 28 Ayes,

0 Nays, 2 Not Voting

Ken Bennett
President of the Senate

Charmain Bellington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor

this 25th day of May, 2004,

at 1:13 o'clock P. M.

Wennifer Ybarra
Secretary to the Governor

Approved this 1 day of

June, 2004,

at 3:45 o'clock P. M.

J. R. Norbeck
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 1 day of June, 2004,

at 4:38 o'clock P. M.

Janice L. Brown
Secretary of State

S.B. 1256