

Senate Engrossed  
**FILED**  
**KEN BENNETT**  
**SECRETARY OF STATE**

State of Arizona  
Senate  
Forty-ninth Legislature  
First Regular Session  
2009

CHAPTER 184

# **SENATE BILL 1262**

AN ACT

AMENDING SECTIONS 20-357, 20-359, 20-371, 23-984 AND 23-1044, ARIZONA REVISED STATUTES; AMENDING TITLE 23, CHAPTER 6, ARTICLE 9, ARIZONA REVISED STATUTES, BY ADDING SECTION 23-1062.02; 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 20-357, Arizona Revised Statutes, is amended to  
3 read:

4 20-357. Filing of rating system; definition

5 A. Every insurer shall file with the director the rating systems the  
6 insurer proposes to use. As used in the rate regulatory provisions of this  
7 article, "rating systems" includes every manual of classifications, rules and  
8 rates, every rating plan and every modification of any of the foregoing.  
9 Every filing shall have a proposed effective date and shall indicate the  
10 character and extent of the coverage contemplated. If a filing does not  
11 include the information on which the insurer supports the filing, and the  
12 director does not have sufficient information to determine whether the filing  
13 meets the rate regulatory requirements of this article, the director shall  
14 require the insurer to furnish information supporting the filing. The  
15 supporting information may include the experience or judgment of the insurer  
16 or rating organization making the filing, its interpretation of any  
17 statistical data on which it relies, the experience of other insurers or  
18 rating organizations or any other relevant factors. A filing and any  
19 supporting information shall be open to public inspection after the filing  
20 becomes effective.

21 B. A workers' compensation insurer shall satisfy its obligation to  
22 make filings by becoming a member of a licensed rating organization that  
23 makes filings and by authorizing the director to accept on its behalf filings  
24 made by the rating organization. A rating organization shall annually file  
25 with the director rates to be effective on ~~October~~ JANUARY 1. Nothing in  
26 this subsection requires an insurer to be a member of the designated rating  
27 organization.

28 C. Each filing shall be on file for a waiting period of at least  
29 thirty days before it becomes effective. On written application by the  
30 insurer or rating organization making the filing, the director may authorize  
31 a filing to become effective before the waiting period expires.

32 D. On written application of the insured that states the insured's  
33 reasons and that is filed with and approved by the director, an insurer may  
34 use a rate in excess of the insurer's filed rate on the insured's risk.

35 E. An insurer shall not make or issue a contract or policy except in  
36 accordance with the filings in effect for that insurer as provided in the  
37 rate regulatory provisions of this article.

38 Sec. 2. Section 20-359, Arizona Revised Statutes, is amended to read:

39 20-359. Deviations from filed workers' compensation rates

40 A. Every insurer shall adhere to the filings made by the rating  
41 organization of which it is a member, except that any member insurer may file  
42 with the director:

43 1. A uniform percentage decrease or increase to be applied to the  
44 statewide rate portion of the rating organization's rate filing.

1           2. A subclassification rate related rule that deviates from the rules  
2 or schedule rating plan filed by the insurer's rating organization. An  
3 insurer shall not apply a deviation and a schedule rating plan within the  
4 same insurance company.

5           B. Each deviation filed shall be on file with the director for a  
6 waiting period of at least thirty days before it becomes effective. On  
7 written application by the insurer making the filing, the director may  
8 authorize a filing to become effective before the waiting period expires. A  
9 deviation that is filed pursuant to subsection A, paragraph 1 of this section  
10 and that is not disapproved by the director expires the following ~~September~~  
11 ~~30~~ DECEMBER 31 at midnight in this state unless the director terminates the  
12 deviation sooner. A deviation that is filed pursuant to subsection A,  
13 paragraph 2 of this section continues until the insurer withdraws the  
14 deviation or the director determines that the deviation no longer meets the  
15 standards prescribed in section 20-356, paragraph 1. At any time the  
16 director may require an insurer to actuarially support a deviation. The  
17 insurer that files the deviation shall simultaneously send a copy of the  
18 filing to the rating organization of which it is a member and to any  
19 designated rating organization.

20           C. A rating organization shall notify the director if the organization  
21 disapproves any deviation relating to workers' compensation insurance. The  
22 director shall notify the industrial commission of the disapproval within ten  
23 days of receipt of the disapproval from the rating organization.

24           Sec. 3. Section 20-371, Arizona Revised Statutes, is amended to read:  
25           20-371. Rate administration

26           A. The director shall ~~promulgate~~ ADOPT reasonable rules and  
27 statistical plans that are reasonably adapted to each of the rating systems  
28 on file with the director and that may be modified from time to time. An  
29 insurer shall use the rules and statistical plans to record and report its  
30 loss and countrywide expense experience in order that the experience of all  
31 insurers may be made available, at least annually, in sufficient form and  
32 detail to aid the director in determining whether rating systems comply with  
33 the standards set forth in this article. The rules and plans may also  
34 provide for the recording and reporting of expense experience items which are  
35 especially applicable to this state and are not susceptible ~~of~~ TO  
36 determination by prorating of countrywide expense experience.

37           B. In ~~promulgating~~ ADOPTING the rules and plans, the director shall  
38 give due consideration to the rating systems on file with the director, and,  
39 in order that the rules and plans may be as uniform as is practicable among  
40 the several states, to the rules and to the form of plans used for comparable  
41 rating systems in other states.

42           C. An insurer is not required to record or report its loss experience  
43 on a classification basis that is inconsistent with the uniform  
44 classification plan.

1 D. The director may designate an organization the director deems  
2 qualified, other than an insurer that has outstanding obligations under a  
3 policy of workers' compensation insurance in this state, to act as the  
4 director's statistical agent. The statistical agent shall assist the  
5 director in gathering and compiling workers' compensation experience and  
6 performing other related services as the director may specify. The  
7 compilations shall be made available subject to reasonable rules adopted by  
8 the director, to insurers and rating organizations, but no insurer shall be  
9 required to file its experience with an organization of which it is not a  
10 member.

11 E. Every insurer shall report its loss and expense experience to the  
12 rating organization of which it is a member. The rating organization shall  
13 report the insurer's experience to the designated statistical agent. If the  
14 rating organization is unable to report the experience of its member insurers  
15 to the designated statistical agent, every insurer that is a member of the  
16 rating organization shall directly report its experience to the designated  
17 statistical agent.

18 F. If there is more than one licensed rating organization that meets  
19 the requirements of section 20-363, subsection E, the director shall  
20 designate one of the organizations as the designated rating organization for  
21 the purpose of annually making and filing with the director statewide  
22 workers' compensation insurance rates that become effective on ~~October 1~~  
23 JANUARY 1.

24 G. The designated rating organization shall annually file its rate  
25 filing with the director on or before August 1 for rates that become  
26 effective on ~~October 1~~ JANUARY 1. The director shall disapprove the filing  
27 if it does not meet the standards of section 20-356, paragraph 1. An insurer  
28 transacting workers' compensation insurance in this state shall adhere to the  
29 expected loss ratios, ballast factors and other experience rating factors and  
30 to the statewide rates and other rating values made by the designated rating  
31 organization for the uniform rate filing, except that an insurer may deviate  
32 from the statewide rate portion of the uniform rate filing according to  
33 section 20-359, subsection A.

34 H. The director may allow the designated statistical agent and  
35 designated rating organization to charge licensed rating organizations that  
36 operate in this state a reasonable fee for their services. The licensed  
37 rating organizations shall pay the fees on a ratable basis.

38 I. To further the uniform administration of rate regulatory laws, the  
39 director and every insurer and rating organization may exchange information  
40 and experience data with insurance supervisory officials, insurers and rating  
41 organizations in other states and may consult with them with respect to rate  
42 making and the application of rating systems.

1 J. If more than one rating organization meets the requirements of  
2 section 20-363, subsection E, the director shall designate the statistical  
3 plan, classification plan or experience rating plan adopted by the designated  
4 rating organization or any other rating organization, or the plans of another  
5 state, as the uniform statistical plan, the uniform classification plan or  
6 the uniform experience rating plan.

7 K. If the director does not designate a uniform statistical plan, a  
8 uniform classification plan or a uniform experience rating plan pursuant to  
9 this section, each insurer shall adhere to the statistical plan,  
10 classification plan, and experience rating plan adopted by the rating  
11 organization of which the insurer is a member in this state.

12 Sec. 4. Section 23-984, Arizona Revised Statutes, is amended to read:

13 23-984. Misrepresentation of payroll, job description, job  
14 function or loss history affecting premium payment;  
15 penalty; violation; classification

16 A. It is unlawful for an employer to wilfully misrepresent to an  
17 insurance carrier the amount of payroll, the job description or job function  
18 of an employee, or the employer's loss history, ~~upon~~ ON which the premium for  
19 workers' compensation insurance to be paid to the insurance carrier is based.

20 B. An employer who violates subsection A is guilty of a class 6  
21 felony.

22 C. In addition to the punishment ~~which~~ THAT may be imposed pursuant to  
23 subsection B, an employer who violates subsection A is liable for a penalty  
24 of ~~ten~~ UP TO THREE times the amount of the difference in premium paid and the  
25 amount the employer should have paid. The penalty shall be collected in a  
26 civil action by THE INSURANCE CARRIER, IN ADDITION TO ANY OTHER DAMAGES THAT  
27 ARE INCURRED BY THE INSURANCE CARRIER DUE TO THE MISREPRESENTATION, INCLUDING  
28 COSTS AND ATTORNEY FEES. THE INSURANCE CARRIER SHALL INITIATE THE CIVIL  
29 ACTION WITHIN FOUR YEARS AFTER THE DATE THE INSURANCE CARRIER KNEW OR WITH  
30 THE EXERCISE OF REASONABLE DILIGENCE SHOULD HAVE KNOWN OF THE  
31 MISREPRESENTATION. THE INSURANCE CARRIER MAY INITIATE THE CIVIL ACTION  
32 REGARDLESS OF WHETHER A CRIMINAL ACTION IS BROUGHT AGAINST THE EMPLOYER.

33 Sec. 5. Section 23-1044, Arizona Revised Statutes, is amended to read:

34 23-1044. Compensation for partial disability; computation

35 A. For temporary partial disability there shall be paid during the  
36 period thereof sixty-six and two-thirds per cent of the difference between  
37 the wages earned before the injury and the wages which the injured person is  
38 able to earn thereafter. Unemployment benefits received during the period of  
39 temporary partial disability and fifty per cent of retirement and pension  
40 benefits received from the insured or self-insured employer during the period  
41 of temporary partial disability shall be considered wages able to be earned.

42 B. Disability shall be deemed permanent partial disability if caused  
43 by any of the following specified injuries, and compensation of fifty-five  
44 per cent of the average monthly wage of the injured employee, in addition to

- 1 the compensation for temporary total disability, shall be paid for the period  
2 given in the following schedule:
- 3 1. For the loss of a thumb, fifteen months.
  - 4 2. For the loss of a first finger, commonly called the index finger,  
5 nine months.
  - 6 3. For the loss of a second finger, seven months.
  - 7 4. For the loss of a third finger, five months.
  - 8 5. For the loss of the fourth finger, commonly called the little  
9 finger, four months.
  - 10 6. The loss of a distal or second phalange of the thumb or the distal  
11 or third phalange of the first, second, third or fourth finger, shall be  
12 considered equal to the loss of one-half of the thumb or finger, and  
13 compensation shall be one-half of the amount specified for the loss of the  
14 entire thumb or finger.
  - 15 7. The loss of more than one phalange of the thumb or finger shall be  
16 considered as the loss of the entire finger or thumb, but in no event shall  
17 the amount received for more than one finger exceed the amount provided for  
18 the loss of a hand.
  - 19 8. For the loss of a great toe, seven months.
  - 20 9. For the loss of a toe other than the great toe, two and one-half  
21 months.
  - 22 10. The loss of the first phalange of any toe shall be considered equal  
23 to the loss of one-half of the toe and compensation shall be one-half of the  
24 amount for one toe.
  - 25 11. The loss of more than one phalange shall be considered as the loss  
26 of the entire toe.
  - 27 12. For the loss of a major hand, fifty months, or of a minor hand,  
28 forty months.
  - 29 13. For the loss of a major arm, sixty months, or of a minor arm, fifty  
30 months.
  - 31 14. For the loss of a foot, forty months.
  - 32 15. For the loss of a leg, fifty months.
  - 33 16. For the loss of an eye by enucleation, thirty months.
  - 34 17. For the permanent and complete loss of sight in one eye without  
35 enucleation, twenty-five months.
  - 36 18. For permanent and complete loss of hearing in one ear, twenty  
37 months.
  - 38 19. For permanent and complete loss of hearing in both ears, sixty  
39 months.
  - 40 20. The permanent and complete loss of the use of a finger, toe, arm,  
41 hand, foot or leg may be deemed the same as the loss of any such member by  
42 separation.
  - 43 21. For the partial loss of use of a finger, toe, arm, hand, foot or  
44 leg, or partial loss of sight or hearing, fifty per cent of the average  
45 monthly wage during that proportion of the number of months in the foregoing

1 schedule provided for the complete loss of use of such member, or complete  
2 loss of sight or hearing, which the partial loss of use thereof bears to the  
3 total loss of use of such member or total loss of sight or hearing. In this  
4 paragraph, "loss of use" means a loss of physical function of the affected  
5 member, sight or hearing. The effect on an employee's ability to return to  
6 the employee's occupation at the time of the injury shall not be considered  
7 in establishing the percentage of loss under this section, except that if the  
8 employee is unable to return to the work the employee was performing at the  
9 time the employee was injured due to the total or partial loss of use,  
10 compensation pursuant to this section shall be calculated based on  
11 seventy-five per cent of the average monthly wage.

12 22. For permanent disfigurement about the head or face, which shall  
13 include injury to or loss of teeth, the commission may, in accordance with  
14 the provisions of section 23-1047, allow such sum for compensation thereof as  
15 it deems just, in accordance with the proof submitted, for a period of not to  
16 exceed eighteen months.

17 C. In cases not enumerated in subsection B of this section, if the  
18 injury causes permanent partial disability for work, the employee shall  
19 receive during such disability compensation equal to fifty-five per cent of  
20 the difference between the employee's average monthly wages before the  
21 accident and the amount which represents the employee's reduced monthly  
22 earning capacity resulting from the disability, but the payment shall not  
23 continue after the disability ends, or the death of the injured employee, and  
24 in case the partial disability begins after a period of total disability, the  
25 period of total disability shall be deducted from the total period of  
26 compensation.

27 D. In determining the amount which represents the reduced monthly  
28 earning capacity for the purposes of ~~subsection~~ SUBSECTIONS A AND C of this  
29 section, consideration shall be given, among other things, to any previous  
30 disability, the occupational history of the injured employee, the nature and  
31 extent of the physical disability, the type of work the injured employee is  
32 able to perform subsequent to the injury, any wages received for work  
33 performed subsequent to the injury and the age of the employee at the time of  
34 injury. IF THE EMPLOYEE IS UNABLE TO RETURN TO WORK OR CONTINUE WORKING IN  
35 ANY EMPLOYMENT AFTER THE INJURY DUE TO THE EMPLOYEE'S TERMINATION FROM  
36 EMPLOYMENT FOR REASONS THAT ARE UNRELATED TO THE INDUSTRIAL INJURY, THE  
37 COMMISSION MAY CONSIDER THE WAGES THAT THE EMPLOYEE COULD HAVE EARNED FROM  
38 THAT EMPLOYMENT AS REPRESENTATIVE OF THE EMPLOYEE'S EARNING CAPACITY. A  
39 DETERMINATION OF EARNING CAPACITY THAT IS BASED ON WAGES THAT COULD HAVE BEEN  
40 EARNED FROM PREVIOUSLY TERMINATED EMPLOYMENT IS SUBJECT TO CHANGE UNDER  
41 SUBSECTION F OF THIS SECTION AND AN EMPLOYEE RETAINS THE RIGHT TO LATER  
42 ESTABLISH THAT THE EMPLOYEE'S REDUCED EARNING CAPACITY IS RELATED IN WHOLE OR  
43 IN PART TO THE INDUSTRIAL INJURY.

44 E. In case there is a previous disability, as the loss of one eye, one  
45 hand, one foot or otherwise, the percentage of disability for a subsequent

1 injury shall be determined by computing the percentage of the entire  
2 disability and deducting therefrom the percentage of the previous disability  
3 as it existed at the time of the subsequent injury.

4 F. For the purposes of subsection C of this section, the commission  
5 shall, in accordance with the provisions of section 23-1047 when the physical  
6 condition of the injured employee becomes stationary, SHALL determine the  
7 amount which represents the reduced monthly earning capacity and upon such  
8 determination make an award of compensation which shall be subject to change  
9 in any of the following events:

10 1. Upon a showing of a change in the physical condition of the  
11 employee subsequent to such findings and award arising out of the injury  
12 resulting in the reduction or increase of the employee's earning capacity.

13 2. Upon a showing of a reduction in the earning capacity of the  
14 employee arising out of such injury where there is no change in the  
15 employee's physical condition, subsequent to the findings and award.

16 3. Upon a showing that the employee's earning capacity has increased  
17 subsequent to such findings and award.

18 G. The commission may adopt a schedule for rating loss of earning  
19 capacity and reasonable and proper rules to carry out the provisions of this  
20 section. In all cases involving this section, except for cases under  
21 subsection B of this section, or in cases involving a request pursuant to  
22 section 23-1061, subsection J for disability compensation, if any issue is  
23 raised regarding whether the injured employee has suffered a loss of earning  
24 capacity because of an inability to obtain or retain suitable work, the  
25 following apply:

26 1. The employer or carrier may present evidence showing that the  
27 inability to obtain suitable work is due, in whole or in part, to economic or  
28 business conditions, or other factors unrelated to the industrial  
29 injury. The injured employee may present evidence showing that the inability  
30 to obtain suitable work is due, in whole or in part, to the industrial injury  
31 or limitations resulting from the injury. The administrative law judge shall  
32 consider all such evidence in determining whether and to what extent the  
33 injured employee has sustained any loss of earning capacity.

34 2. In cases involving loss of employment, the employer or carrier may  
35 present evidence showing that the injured employee was terminated from  
36 employment or has not obtained suitable work, or both, due, in whole or in  
37 part, to economic or business conditions, or other factors unrelated to the  
38 injury. The injured employee may present evidence showing that such  
39 termination or inability to obtain suitable work is due, in whole or in part,  
40 to the industrial injury or limitations resulting from the injury. The  
41 administrative law judge shall consider all such evidence in determining  
42 whether and to what extent the injured employee has sustained any loss or  
43 additional loss of earning capacity.

44 H. Any single injury or disability that is listed in subsection B of  
45 this section and that is not converted into an injury or disability

1 compensated under subsection C of this section by operation of this section  
2 shall be treated as scheduled under subsection B of this section regardless  
3 of its actual effect on the injured employee's earning capacity.

4 Sec. 6. Title 23, chapter 6, article 9, Arizona Revised Statutes, is  
5 amended by adding section 23-1062.02, to read:

6 23-1062.02. Off-label prescription of controlled substances;  
7 prescription of schedule II controlled  
8 substances; reports; treatment plans; definition

9 A. ON WRITTEN REQUEST OF AN INTERESTED PARTY AS DEFINED IN SECTION  
10 23-901, A PHYSICIAN SHALL INCLUDE IN THE REPORT REQUIRED UNDER COMMISSION  
11 RULE INFORMATION PERTAINING TO THE OFF-LABEL USE OF A NARCOTIC, OPIUM BASED  
12 CONTROLLED SUBSTANCE OR SCHEDULE II CONTROLLED SUBSTANCE BY A CLAIMANT, WHICH  
13 MAY INCLUDE THE JUSTIFICATION FOR USE OF THE CONTROLLED SUBSTANCE, AND A  
14 TREATMENT PLAN THAT INCLUDES A DESCRIPTION OF MEASURES THAT THE PHYSICIAN  
15 WILL IMPLEMENT TO MONITOR AND PREVENT THE DEVELOPMENT OF ABUSE, DEPENDENCE,  
16 ADDICTION OR DIVERSION BY THE EMPLOYEE. THE INTERESTED PARTY MAY ALSO  
17 REQUEST THAT THE TREATMENT PLAN INCLUDE A MEDICATION CONTRACT, A PLAN FOR  
18 SUBSEQUENT FOLLOW-UP VISITS AND DRUG TESTING AND DOCUMENTATION THAT THE  
19 MEDICATION REGIME IS PROVIDING RELIEF THAT IS DEMONSTRATED BY IMPROVED  
20 FUNCTION.

21 B. IF THE PHYSICIAN DOES NOT COMPLY WITH THIS SECTION, THE INTERESTED  
22 PARTY IS NOT RESPONSIBLE FOR PAYMENT FOR THE PHYSICIAN'S SERVICES UNTIL THE  
23 PHYSICIAN COMPLIES WITH SUBSECTION A OF THIS SECTION.

24 C. FOR THE PURPOSES OF THIS SECTION, "OFF-LABEL USE" MEANS USE OF A  
25 PRESCRIPTION MEDICATION BY A PHYSICIAN TO TREAT A CONDITION OTHER THAN THE  
26 USE FOR WHICH THE DRUG WAS APPROVED BY THE UNITED STATES FOOD AND DRUG  
27 ADMINISTRATION.

28 Sec. 7. Intent

29 It is the intent of the legislature that the amendments to section  
30 23-1044, subsection D, Arizona Revised Statutes, as amended by this act, are  
31 to overrule the court decision in Arizona Department of Public Safety v.  
32 Industrial Commission of Arizona, 176 Ariz. 318, 861 P.2d 603 (1993), to the  
33 extent that the court opinion precludes consideration of wages earned from  
34 employment from which the employee has been terminated for reasons unrelated  
35 to the industrial injury. Further, the employee retains the full rights to  
36 seek rearrangement under section 23-1044, subsection F, Arizona Revised  
37 Statutes, as amended by this act. It is the legislature's intent to also  
38 give the industrial commission broad discretion to determine an injured  
39 worker's earning capacity, including whether and to what extent to consider  
40 relevant evidence of wages earned in employment that has been terminated.

41 Sec. 8. Applicability

42 Section 23-1044, subsection D, Arizona Revised Statutes, as amended by  
43 this act, only applies to an employee's injury that occurs on or after the  
44 effective date of this act.

APPROVED BY THE GOVERNOR JULY 13, 2009.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JULY 13, 2009.

Passed the House June 30, 20 09

by the following vote: 59 Ayes,

0 Nays, 1 Not Voting

[Signature]  
Speaker of the House  
[Signature]  
Chief Clerk of the House

Passed the Senate June 22, 20 09

by the following vote: 28 Ayes,

0 Nays, 2 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  
15<sup>th</sup> day of July, 2009,

at 8:53 o'clock A. M.

[Signature]  
Secretary to the Governor

Approved this 13<sup>th</sup> day of

July, 2009,

at 6:00 o'clock P M.

[Signature]  
Governor of Arizona

S.B. 1262

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State  
this 13<sup>th</sup> day of July, 2009,

at 7:35 o'clock P M.

[Signature]  
Secretary of State