Senate Engrossed

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KEN BENNETT
SECRETARY OF STATE

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CHAPTER 186

SENATE BILL 1181

AN ACT

AMENDING SECTIONS 20-661, 20-662, 20-663, 20-664, 20-666, 20-667, 20-673, 20-674 AND 20-676, ARIZONA REVISED STATUTES; REPEALING SECTION 20-679, ARIZONA REVISED STATUTES; AMENDING TITLE 20, CHAPTER 3, ARTICLE 6, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 20-679; AMENDING SECTIONS 20-680, 23-902, 23-961, 23-966, 23-1065 AND 23-1081, ARIZONA REVISED STATUTES; MAKING A TRANSFER; RELATING TO THE ARIZONA PROPERTY AND CASUALTY INSURANCE GUARANTY FUND.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 20-661, Arizona Revised Statutes, is amended to read:

20-661. Definitions

In this article, unless the context otherwise requires:

1. "Account" means any one of the ~~two~~ THREE accounts within the Arizona property and casualty insurance guaranty fund.

2. "Board" means the guaranty fund board.

3. "Covered claim" means an unpaid claim, including one for unearned premium, which arises out of and is within the coverage of an insurance policy to which this article applies issued by an insurer, if such insurer becomes an insolvent insurer after August 27, 1977 and the claimant or insured is a resident of this state at the time of the insured event or the property from which the claim arises is permanently located in this state. Covered claim does not include any amount due any reinsurer, insurer, insurance pool or underwriting association as subrogation recoveries or otherwise nor shall it include any obligations of the insolvent insurer arising out of any reinsurance contracts nor shall it include attorney fees or adjustment expenses incurred prior to the determination of insolvency.

4. "Fund" means the Arizona property and casualty insurance guaranty fund.

5. "Insolvent insurer" means an insurer THAT IS licensed to transact insurance in this state either at the time the policy was issued or when the insured event occurred and against whom an order of liquidation with a finding of insolvency has been entered after ~~the effective date of this amendment to this section~~ SEPTEMBER 19, 2007 by a court of competent jurisdiction in the insurer's state of domicile or by this state pursuant to section 20-623, and the order of liquidation has not been stayed or been the subject of a writ of supersedeas or other comparable order. FOR PURPOSES OF THE WORKERS' COMPENSATION INSURANCE ACCOUNT, AN "INSOLVENT INSURER" SHALL ALSO INCLUDE ANY INSOLVENT INSURER AGAINST WHICH AN ORDER OF LIQUIDATION WITH A FINDING OF INSOLVENCY HAS BEEN ENTERED ON, BEFORE OR AFTER THE EFFECTIVE DATE OF THIS SECTION.

6. "Member insurer" means any person who writes any kind of insurance, unless such writing is restricted solely to life, title, surety, disability, credit, mortgage guaranty~~, workers' compensation~~ or ocean-marine insurance, including the exchange of reciprocal or inter-insurance contracts, and is licensed to transact insurance in this state.

7. "Net direct written premiums" means direct gross premiums written in this state on insurance policies to which this article applies, less return premiums and dividends paid or credited to policyholders on such direct business. Net direct written premiums do not include premiums on contracts between insurers or reinsurers.

Sec. 2. Section 20-662, Arizona Revised Statutes, is amended to read:

20-662. Insurance guaranty fund

A. ~~There is established an~~ THE Arizona property and casualty insurance guaranty fund IS ESTABLISHED within the department of insurance. The fund shall be deposited in a depository designated by the director and shall exercise its powers through a board established pursuant to section 20-663.

B. For the purpose of assessment, the fund shall be divided into ~~two~~ THREE separate accounts:

1. The automobile insurance account.

2. THE WORKERS' COMPENSATION INSURANCE ACCOUNT.

~~2.~~ 3. The account for all other insurance to which this article applies.

C. All costs, expenses and liabilities of the fund shall be paid by the fund and shall not be a general obligation of the state.

D. All monies placed in the accounts of the fund may be expended ONLY for the purposes of this article AND ONLY FOR THE PURPOSES OF THE ACCOUNT INTO WHICH THE MONIES WERE PLACED. NO MONIES PLACED IN ONE OF THE THREE SEPARATE ACCOUNTS ESTABLISHED BY THIS SECTION MAY BE USED DIRECTLY OR INDIRECTLY FOR ANY OTHER PURPOSE, INCLUDING TO SATISFY AN OBLIGATION ATTRIBUTABLE TO ANOTHER ACCOUNT.

Sec. 3. Section 20-663, Arizona Revised Statutes, is amended to read:

20-663. Guaranty fund board; composition; compensation

A. ~~There~~ THE GUARANTY FUND BOARD is established within the department of insurance ~~a guaranty fund board~~ consisting of eleven members who are appointed by the governor. Membership on the board shall be for a term of three years.

B. The members of the board shall be appointed from a list of persons submitted to the governor by the director of insurance and shall be representative of a cross section of the industry ~~who are~~ THAT IS authorized to transact property or casualty insurance within this state. The board shall be composed of:

1. Nine members, each representing a different insurer that is authorized to transact property or casualty insurance business in this state, INCLUDING AT LEAST ONE MEMBER WHO REPRESENTS A WORKERS' COMPENSATION INSURER THAT HAS BEEN AUTHORIZED TO TRANSACT WORKERS' COMPENSATION INSURANCE BUSINESS IN THIS STATE FOR AT LEAST TEN CONSECUTIVE YEARS.

2. One member ~~shall be~~ WHO IS a casualty insurance producer residing in this state.

3. One member ~~representing~~ WHO REPRESENTS the general public.

C. The board shall conduct periodic meetings in Phoenix. Meetings shall be held on the call of the director or on the written request of any two members of the board.

D. Subject to the powers of the director, the board shall administer, operate and manage the fund pursuant to this article. The board shall advise

and counsel with the director on matters relating to the solvency of insurers.

E. Members of the board shall receive no compensation and shall not be entitled to travel expenses as authorized by title 38, chapter 4, article 2, but shall be entitled to be reimbursed for expenses incurred by them as members of the board from the assets of the fund.

Sec. 4. Section 20-664, Arizona Revised Statutes, is amended to read:

20-664. Powers and duties of the board

A. The board shall:

1. Investigate claims brought against the fund and adjust, compromise, settle and pay covered claims to the extent of the fund's obligation and deny all other claims. IN REGARD TO WORKERS' COMPENSATION CLAIMS, THE BOARD SHALL ADJUST, COMPROMISE, SETTLE AND PAY COMPENSABLE CLAIMS, AND DENY ALL OTHER CLAIMS, SUBJECT TO THE REGULATORY AND ADJUDICATORY AUTHORITY OF THE INDUSTRIAL COMMISSION OVER WORKERS' COMPENSATION CLAIMS PURSUANT TO TITLE 23, CHAPTER 6.

2. Within six months after the determination of insolvency or six months after the fund discovers or should have discovered the settlement of a covered claim, whichever is later, deny and state the basis for the denial or pay any covered claim that was settled within four months before the determination of insolvency of the insolvent insurer. THIS PARAGRAPH DOES NOT APPLY TO A SETTLEMENT OF A WORKERS' COMPENSATION CLAIM OR COMMUTATION OF PERMANENT DISABILITY BENEFITS APPROVED BY THE INDUSTRIAL COMMISSION UNLESS THE INDUSTRIAL COMMISSION AWARD APPROVING THE SETTLEMENT OR COMMUTATION OF BENEFITS HAS NOT BECOME FINAL.

3. Allocate claims paid and expenses incurred among the ~~two~~ THREE accounts of the fund separately.

4. Assess member insurers separately for each account of the fund AND EXPEND AMOUNTS ASSESSED ONLY FOR THE PURPOSES OF THE ACCOUNT INTO WHICH THE AMOUNTS ASSESSED WERE PLACED.

5. Notify such persons as the director directs pursuant to section 20-668, subsection B, paragraph 1.

6. Handle claims through its employees or through one or more insurers or other persons designated as servicing facilities. Designation of a servicing facility shall be subject to the approval of the director. Designation may be declined by a member insurer.

7. Reimburse each servicing facility for obligations of the fund paid by the facility and for expenses incurred by the facility while handling the claims on behalf of the fund and pay the other expenses of the fund authorized pursuant to this article.

B. The board may:

1. Appear in, defend and appeal any action on a claim that is brought against the fund.

2. Employ or retain such persons as are necessary to handle claims and perform other duties of the fund.

3. Borrow funds necessary to carry out the intent of this article pursuant to the plan of operation.

4. Sue and be sued.

5. Negotiate and become a party to such contracts as are necessary to carry out the intent of this article.

6. Perform such other acts as are necessary or proper to carry out the intent of this article.

Sec. 5. Section 20-666, Arizona Revised Statutes, is amended to read:

20-666. Assessments; notification; exemptions; setoffs; refunds

A. The board shall assess each member insurer, as a condition of such insurer's authority to transact insurance in this state, in such amounts as are necessary to pay the obligations of the fund pursuant to section 20-667 subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, the cost of examinations and other expenses authorized pursuant to this article.

B. The assessment of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the preceding calendar year on the kinds of insurance in the account bears to the net direct written premiums of all member insurers for the preceding calendar year on the kinds of insurance in the account. The board shall notify each member insurer of the assessment not later than thirty days before it is due. No member insurer may be assessed in any year on any account an amount greater than one per cent of such member insurer's net direct written premiums for the preceding calendar year on the kinds of insurance in the account.

C. EXCEPT FOR THE WORKERS' COMPENSATION INSURANCE ACCOUNT, if the maximum assessment, together with the other assets of the fund in any account, does not provide in any one year in any account an amount sufficient to make all necessary payments from such account, the funds available may be prorated and the unpaid portion shall be paid as soon as funds become available. The board shall pay claims in any order which it may deem reasonable, including the payment of claims as such claims are received from the claimants or in groups or categories of claims.

D. The board may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance.

E. Each member insurer serving as a servicing facility may set off against any assessment, authorized payments made on covered claims and expenses incurred in the payment of such claims by the member insurer if they are chargeable to the account for which the assessment is made.

F. In addition to all other assessments, the board may assess each member insurer in an amount not to exceed two hundred dollars per year for

the purpose of paying for operating expenses of the board and employees of the board.

G. If, at the end of any calendar year, the board finds that the assets of the fund in any account exceed the liabilities of such account as estimated by the board for the coming year, the board may refund to the member insurers in proportion to the contribution of each member insurer to such account the amount by which the assets of the account exceed the liabilities. All refunds will be contingent upon the return of a member insurer's certificate(s) of contribution and will be in an amount equal to the premium tax offset value of the relinquished certificate.

Sec. 6. Section 20-667, Arizona Revised Statutes, is amended to read:

20-667. Obligations of the fund

A. The fund is obligated solely to the extent of the covered claims existing during any of the following periods:

1. Before the determination of insolvency and arising within thirty days after the determination of insolvency.

2. Before the policy expiration date if less than thirty days after the determination of insolvency.

3. Before the insured replaces the policy or on request effects cancellation, if the insured does so within thirty days of the determination of insolvency.

B. EXCEPT FOR OBLIGATIONS ARISING OUT OF A COVERED WORKERS' COMPENSATION CLAIM FOR BENEFITS UNDER TITLE 23, CHAPTER 6, such obligation shall include only that amount of each covered claim that is more than one hundred dollars and that is less than three hundred thousand dollars or an amount of more than twenty-five dollars but not exceeding ten thousand dollars for a covered claim for the return of unearned premiums. In no event shall the fund be obligated to a policyholder or claimant in any amount in excess of the face amount of the policy from which the claim arises.

C. The fund is deemed the insurer to the extent of its obligation on the covered claims and to such extent shall have all rights, duties and obligations of the insolvent insurer as if the insurer had not become insolvent. Notwithstanding any other law, the fund is not obligated to pay any amount that does not constitute a payment of a covered claim, including taxable costs, attorney fees or interest that could be awarded or any additional liabilities or obligations that might otherwise exist or accrue against the insolvent insurer if the insurer had not become insolvent.

D. Any settlement of a covered claim that is entered into with any insured or claimant within four months before the determination of insolvency and that has not been paid is voidable by the fund for six months after the determination of the insolvency or six months after the fund discovers or should have discovered the settlement, whichever is later.

E. NOTWITHSTANDING SUBSECTION D OF THIS SECTION, A SETTLEMENT OR COMMUTATION OF A WORKERS' COMPENSATION CLAIM APPROVED BY AN AWARD OF THE

INDUSTRIAL COMMISSION THAT HAS BECOME FINAL PURSUANT TO SECTION 23-942 OR 23-943 IS NOT VOIDABLE.

~~E.~~ F. The fund is not bound by any settlement that is more than the fund's limits of liability established by this article.

G. BEGINNING ON THE EFFECTIVE DATE OF THIS AMENDMENT TO THIS SECTION, THE FUND SHALL ASSUME ALL CONTRACTUAL RIGHTS AND OBLIGATIONS OF THE INDUSTRIAL COMMISSION REGARDING THE ADMINISTRATION OF WORKERS' COMPENSATION INSOLVENT CARRIER CLAIMS IF THE INDUSTRIAL COMMISSION HAS CONTRACTED WITH A THIRD-PARTY PROCESSOR TO ADMINISTER CLAIMS.

Sec. 7. Section 20-673, Arizona Revised Statutes, is amended to read:

20-673. Nonduplication of recovery; exhausting all other applicable coverages; rights of fund and member insurer; definition

A. Any person having a claim against an insurer under any provision in an insurance policy that is also a covered claim shall be required to exhaust first all rights under ~~such~~ THAT policy. Any amount payable on a covered claim pursuant to this article shall be reduced by the amount of ~~such~~ THE recovery under the claimant's insurance policy. Any recovery pursuant to this article shall be reduced by the amount of the recovery under the claimant's insurance policy. A member insurer or other insurer, which pays ~~such~~ THE insurer's own policy, shall have no right of subrogation or recovery against the insured of an insolvent insurer. A CLAIMANT FOR WORKERS' COMPENSATION BENEFITS SHALL HAVE ALL RIGHTS AND OBLIGATIONS CONFERRED UNDER TITLE 23, CHAPTER 6.

B. Any person having a claim that may be recovered under more than one insurance guaranty fund or its equivalent or who is insured under more than one policy shall first exhaust coverage from the fund of the place of residence of the insured or, if it is a first-party claim for damage to property with a permanent location, shall first exhaust coverage from the fund of the location of the property, or shall first exhaust coverage under ~~such~~ THE other policy, AND IF IT IS A WORKERS' COMPENSATION CLAIM, RECOVERY SHALL BE SOUGHT FROM THE GUARANTY FUND OR ITS EQUIVALENT OF THE PLACE OF RESIDENCE OF THE CLAIMANT. Any recovery pursuant to this article shall be reduced by the amount of the recovery from any other insurance guaranty fund or its equivalent or under another policy. Covered claims by subscribers of an insolvent reciprocal insurer shall not be paid until all subscribers have been assessed pursuant to section 20-791.

C. Where more than one policy may be applicable, a policy issued by the insolvent insurer shall be deemed to be excess coverage. The claimant shall be required to exhaust all rights under other applicable coverage or coverages. Any recovery pursuant to this article shall be reduced by the amount of the recovery under the claimant's insurance policy. Any amount payable on a covered claim shall be reduced by the amount of ~~such~~ THE recovery under other applicable insurance.

D. EXCEPT FOR WORKERS' COMPENSATION CLAIMANTS, if damages against uninsured motorists are recoverable by the claimant from ~~such~~ THE claimant's own insurer, ~~such~~ THE recoverable damages shall reduce the amount of any recovery pursuant to this article if the full amount of ~~such~~ THE uninsured motorist coverage has been exhausted. ~~Such~~ THE claimant shall have no claim against the insured of the insolvent carrier or the fund if the full amount of uninsured motorist coverage was not recovered by ~~such~~ THE claimant. A member insurer shall have no right of subrogation against the insured of the insolvent carrier or against the fund for any amount paid by ~~such~~ THE insurer under uninsured motorist coverage. A member insurer may file a claim for ~~such~~ subrogation payments under uninsured motorist coverage against the ancillary or domiciliary receiver of the insolvent insurer.

E. The fund shall receive the proceeds of any amounts recoverable on reinsurance contracts or treaties entered into by the insolvent insurer that cover any of the liabilities incurred by the insolvent insurer in the category or categories involved. ~~Such~~ THE proceeds shall be limited to payments ~~upon~~ ON or loss adjustment expenses or defense costs actually incurred by the fund on account of claims covered in ~~such~~ THE contracts or treaties. The director, as receiver or ancillary receiver, shall receive the proceeds of any reinsurance recoverable to the extent of payment on claims, loss adjustment expenses or defense costs made ~~prior to~~ BEFORE the order of liquidation.

F. If a covered claim arises out of two or more policies to which this article applies, a recovery under one policy reduces the amount that is payable under the other policy. The fund is not liable for the payment of more than one policy on a covered claim.

G. For the purposes of this article, "exhaustion of all rights under any other policy of insurance" means the payment of the applicable policy limits or an adjudication by a court of record that no benefits are owed.

Sec. 8. Section 20-674, Arizona Revised Statutes, is amended to read:

20-674. Premium tax offset

A. The fund shall issue to each insurer paying an assessment pursuant to this article a certificate of contribution, in a form prescribed by the director for the amount paid. All outstanding certificates shall be of equal priority without reference to amounts or dates of issue.

B. EXCEPT FOR PREMIUM TAXES AND ASSESSMENTS COLLECTED PURSUANT TO TITLE 23, CHAPTER 6, a certificate of contribution issued to a member insurer may be offset against ~~such~~ THE insurer's premium tax liability to this state in the amount of twenty per cent of the assessment for the year of assessment and twenty per cent of the assessment per year for each of the succeeding four years. A member shall at its option have the right to show a certificate of contribution as an asset in the form approved by the director at percentages of the original face amount approved by the director, for calendar years as follows:

1. One hundred per cent for the calendar year of issuance.

2. Eighty per cent for the first calendar year after the year of issuance.

3. Sixty per cent for the second calendar year after the year of issuance.

4. Forty per cent for the third calendar year after the year of issuance.

5. Twenty per cent for the fourth calendar year after the year of issuance.

C. Any sums available for refund, pursuant to section 20-666, from the fund ~~which~~ THAT have been written off by contributing insurers and offset against premium taxes shall be paid to the director and shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

D. Notwithstanding subsection B of this section, the total amount a member insurer, as defined in section 20-661, may offset against its premium tax liability pursuant to a certificate of contribution that is issued from 1987 through 1994 shall not exceed the following percentage amounts for each certificate of contribution, except that in no event may the total amount of the offset exceed one hundred per cent of each assessment:

1. For 1992, thirteen per cent.

2. For 1993, eleven per cent.

3. For 1994, thirteen per cent.

E. No insurer may offset its premium tax liability by any amount unless the assessment for which the first year credit is claimed was collected by the guaranty fund in the calendar year for which the insurer seeks to offset its taxes.

F. Beginning in 1995, the total amount that a member insurer may offset against its premium tax liability pursuant to a certificate of contribution shall be as provided in subsection B of this section, except that in no event may the total amount of the offset exceed one hundred per cent of the assessment.

Sec. 9. Section 20-676, Arizona Revised Statutes, is amended to read:

20-676. <u>Stay of proceedings</u>

A. All proceedings in which the insolvent insurer or the insolvent insurer's insured is a party in any court of this state shall be stayed for six months from the date the insolvency is determined or an ancillary proceeding is instituted in this state, whichever is later, to permit proper defense by the fund of all pending causes of action as to any covered claim. At the request of any party and on a showing of good cause, the court may shorten or lengthen the stay prescribed in this section. THIS SUBSECTION DOES NOT APPLY TO PROCEEDINGS IN WHICH THE INSOLVENT INSURER IS A PARTY TO A PROCEEDING BEFORE THE INDUSTRIAL COMMISSION REGARDING AN EMPLOYEE'S ENTITLEMENT TO BENEFITS UNDER TITLE 23, CHAPTER 6, EXCEPT THAT, ON A SHOWING OF GOOD CAUSE, THE INDUSTRIAL COMMISSION SHALL GRANT UP TO A NINETY-DAY CONTINUANCE OF ANY SCHEDULED HEARING TO ALLOW THE FUND TO ASSUME THE DEFENSE AND INVESTIGATE THE CLAIM.

B. On application of the fund, either on the fund's own behalf or on the insured's behalf, the court may set aside any judgment, order, decision, verdict, finding or award arising from the default of the insolvent insurer or the insurer's failure to defend the insured and the fund shall be permitted to defend the claim on the merits.

Sec. 10. Repeal

Section 20-679, Arizona Revised Statutes, is repealed.

Sec. 11. Title 20, chapter 3, article 6, Arizona Revised Statutes, is amended by adding a new section 20-679, to read:

20-679. Limitations on filing of creditor's claims

A. NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE, A COVERED CLAIM SHALL NOT INCLUDE A CLAIM FILED WITH THE FUND AFTER THE EARLIER OF:

1. EIGHTEEN MONTHS AFTER THE DATE OF THE ORDER OF LIQUIDATION.

2. THE FINAL DATE SET BY THE COURT FOR THE FILING OF CLAIMS AGAINST THE LIQUIDATOR OR RECEIVER OF AN INSOLVENT INSURER.

B. NOTWITHSTANDING SUBSECTION A OF THIS SECTION, A COVERED CLAIM FOR WORKERS' COMPENSATION SHALL INCLUDE CLAIMS FILED THAT MEET THE REQUIREMENTS OF SECTION 20-667, SUBSECTION A AND THE STATUTORY FILING REQUIREMENTS OF SECTION 23-1061.

Sec. 12. Section 20-680, Arizona Revised Statutes, is amended to read:

20-680. Exempt types of insurance

A. This article applies to all kinds of insurance except:

1. Life.

2. Title.

3. Surety.

4. Disability.

5. Credit.

6. Mortgage guarantee.

~~7. Workers' compensation.~~

~~8.~~ 7. Ocean marine insurance.

~~9.~~ 8. Insurance of warranties or service contracts, including insurance that provides for the repair, replacement or service of goods or property, or indemnification for repair, replacement or service, for the operational or structural failure of the goods or property due to a defect in materials, workmanship or normal wear and tear, or reimbursement for the liability incurred by the issuer of agreements or service contracts that provide these benefits.

~~10.~~ 9. Any kind of surplus lines insurance.

~~11.~~ 10. Any policy of insurance issued to an industrial insured pursuant to section 20-400.10.

~~12.~~ 11. Any new types of coverages approved or permitted after August 27, 1977.

B. The exemptions prescribed in this section do not restrict any of the fund's rights or defenses permitted under this article, including the application of any credit or offset prescribed in section 20-673 for payments

made under any policy of insurance, including any policy of insurance that is exempt from this article.

Sec. 13. Section 23-902, Arizona Revised Statutes, is amended to read:

23-902. Employers subject to chapter; exceptions

A. Employers subject to this chapter are the state, each county, city, town, municipal corporation and school district and every person who employs any workers or operatives regularly employed in the same business or establishment under contract of hire, including covered employees pursuant to a professional employer agreement, except domestic servants. Exempted employers of domestic servants may come under this chapter by complying with its provisions and the rules of the commission. For the purposes of this subsection, "regularly employed" includes all employments, whether continuous throughout the year, or for only a portion of the year, in the usual trade, business, profession or occupation of an employer.

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

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

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

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

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

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

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

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

5. Does not provide tools to the independent contractor.

6. Does not dictate the time of performance.

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

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

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

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

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

2. Obtained through coercion or duress.

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

Sec. 14. Section 23-961, Arizona Revised Statutes, is amended to read:

23-961. <u>Methods of securing compensation by employers; deficit premium; civil penalty</u>

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

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

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

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

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

C. Insurance carriers that transact the business of workers' compensation insurance in this state ~~shall be~~ ARE subject to the rules of the director of insurance.

~~D. The director of insurance shall not issue to an insurance carrier a certificate of authority that authorizes the insurance carrier to transact workers' compensation insurance until the insurer deposits with the state treasurer, through the director of insurance, cash or securities. The amount of cash or securities required under this subsection shall be at least equal to the greater of the following amounts:~~

~~1. One hundred thousand dollars.~~

~~2. The sum of subdivisions (a) and (b) of this paragraph less credits for approved reinsurance computed as of the preceding December 31 or other time as requested by the department of insurance for workers' compensation insurance written subject to the laws of this state:~~

~~(a) The aggregate of the present values at six per cent interest of all determined and estimated future direct reported loss and loss expense payments on compensation claims incurred more than three years immediately before the preceding December 31 or other time as requested by the department of insurance.~~

~~(b) The aggregate of the amounts determined for each of the three years immediately before the preceding December 31 or other time as requested by the department of insurance that equals the greater of the following:~~

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

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

~~E. On or before April 15 and on any date that the department of insurance specifically requests, an insurance carrier shall file with the department of insurance the information necessary to compute the required amount to be deposited pursuant to subsection D of this section and shall deposit any required additional amount.~~

~~F. An insurance carrier shall maintain at all times a deposit of cash or securities with the state treasurer, through the director of insurance, in an amount that is not less than the amount required under this section.~~

~~G. Cash or securities deposited pursuant to this section are subject to approval by the director of insurance at all times. The director of insurance shall hold the cash or securities for fulfillment of the obligations of the insurance carrier, including an insurance carrier acting as a reinsurer, under this chapter. The commission shall have a lien against the cash or securities deposited to the extent the special fund is liable to pay the obligations secured by the cash or securities.~~

D. ON APPLICATION OF AN INSURANCE CARRIER, THE DIRECTOR OF INSURANCE MAY ORDER THE RELEASE TO THE INSURANCE CARRIER OF ALL OR PART OF THE CASH OR SECURITIES THAT THE INSURANCE CARRIER DEPOSITED BEFORE THE EFFECTIVE DATE OF THIS AMENDMENT TO THIS SECTION WITH THE STATE TREASURER PURSUANT TO THIS SECTION. IN DETERMINING WHETHER TO ORDER THE RELEASE OF ALL OR PART OF THE DEPOSIT, THE DIRECTOR OF INSURANCE SHALL CONSIDER ALL OF THE FOLLOWING:

1. THE FINANCIAL CONDITION OF THE INSURANCE CARRIER.

2. THE INSURANCE CARRIER'S LIABILITIES FOR WORKERS' COMPENSATION LOSS AND LOSS EXPENSES IN THIS STATE.

3. WHETHER THE INSURANCE CARRIER IS SUBJECT TO A FINDING OF HAZARDOUS CONDITION, AN ORDER OF SUPERVISION, A DELINQUENCY PROCEEDING OR ANY OTHER REGULATORY ACTION IN THIS STATE, THE INSURANCE CARRIER'S STATE OF DOMICILE OR ANY OTHER STATE IN WHICH THE INSURANCE CARRIER TRANSACTED THE BUSINESS OF INSURANCE.

4. ANY OTHER FACTORS THE DIRECTOR OF INSURANCE DETERMINES ARE RELEVANT TO THE APPLICATION FOR RELEASE OF THE DEPOSIT.

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

~~I.~~ F. At least thirty days' notice shall be given by the insurance carrier to the employer and to the commission of any cancellation or nonrenewal of a policy if the cancellation or nonrenewal is at the election of the insurance carrier. The insurance carrier shall promptly notify the commission of any cancellation by the employer or failure of the employer to renew the policy. The failure to give notice of nonrenewal if the nonrenewal is at the election of the insurance carrier shall not extend coverage beyond the policy period. An insurance carrier shall notify the commission on a

form prescribed by the commission that it has insured an employer for workers' compensation promptly after undertaking to insure the employer.

~~J.~~ G. Every insurance carrier on or before March 1 of each year shall pay to the state treasurer for the credit of the administrative fund, in lieu of all other taxes on workers' compensation insurance, a tax of not more than three per cent on all premiums collected or contracted for during the year ending December 31 next preceding, less the deductions from such total direct premiums for applicable cancellations, returned premiums and all policy dividends or refunds paid or credited to policyholders within this state and not reapplied as premiums for new, additional or extended insurance. Every self-insured employer, including workers' compensation pools, on or before March 31 of each year shall pay a tax of not more than three per cent of the premiums that would have been paid by the employer if the employer had been fully insured by an insurance carrier authorized to transact workers' compensation insurance in this state during the preceding calendar year. The commission shall adopt rules that shall specify the premium plans and methods to be used for the calculation of rates and premiums and that shall be the basis for the taxes assessed to self-insured employers. The tax shall be not less than two hundred fifty dollars per annum and shall be computed and collected by the commission and paid to the state treasurer for the credit of the administrative fund at a rate not exceeding three per cent to be fixed annually by the industrial commission. The rate shall be no more than is necessary to cover the actual expenses of the industrial commission in carrying out its powers and duties under this title. Any quarterly payments of tax pursuant to subsection ~~L~~ I of this section shall be deducted from the tax payable pursuant to this subsection.

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

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

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

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

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

~~L.~~ I. Any insurer that, pursuant to this section, paid or is required to pay a tax of two thousand dollars or more for the preceding calendar year shall file a quarterly report, in a form prescribed by the commission, accompanied by a payment in an amount equal to the tax due at the rates prescribed in subsection ~~J~~ G of this section for premiums determined pursuant to subsection ~~J~~ G of this section or an amount equal to twenty-five per cent of the tax paid or required to be paid pursuant to subsection ~~J~~ G of this section for the preceding calendar year. The quarterly payments

shall be due and payable on or before the last day of the month following the close of the quarter and shall be made to the state treasurer.

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

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

~~O.~~ L. An insurance carrier authorized to write workers' compensation insurance may not assess an employer premiums for services provided by a contractor alleged to be an employee under section 23-902, subsection B or C, unless the carrier has done both of the following:

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

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

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

> I am a sole proprietor, and I am doing business as <u>(name of sole proprietor)</u>. I am performing work as an independent contractor for <u>(name of employer)</u>. I am not the employee of <u>(name of employer)</u> for workers' compensation purposes, and, therefore, I am not entitled to workers' compensation benefits from <u>(name of employer)</u>. 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. 15. Section 23-966, Arizona Revised Statutes, is amended to read:

23-966. <u>Failure of employer to pay claim or comply with commission order; reimbursement of funds</u>

A. If ~~an insurance carrier or~~ A self-insured employer or other employer authorized by the commission to process or pay claims directly pursuant to this chapter does not fully comply with the provisions of the workers' compensation law relating to the processing or payment of

compensation, medical benefits or the final orders of the commission, the workers' compensation claims shall be assigned by the commission to the special fund established by section 23-1065. The special fund shall ensure that these claims are processed and that compensation, benefits or amounts due are paid. The special fund may use third-party processors or other legal, medical, claims or labor market personnel to assist in the processing and payment of claims assigned under this section.

B. In addition to expenditures authorized under subsection A of this section, the special fund may use monies for any expense or service that is necessary to ensure that claims assigned under subsection A of this section are processed and paid, necessary to assist in the determination of liability of a claim that is assigned under this section or necessary to assist in the collection of monies owed to the special fund under this section, including collection against the cash, securities, bond and other assets of the ~~insurance carrier or~~ employer. These expenses may include travel, discovery procedures and employing any third-party processor, expert, consultant or professional, including an attorney, auditor, examiner or actuary. The special fund shall reimburse the administrative fund for all expenses incurred by the administrative fund related to the processing and payment of claims assigned under this section.

C. The special fund shall have a claim against the ~~insurance carrier or~~ employer for all monies that are spent or anticipated to be spent under this section, including administrative costs, necessary expenses and attorney fees. Any claim by the special fund shall be made on the cash, securities or bond filed under section 23-961 or applicable rules or on any other asset of the ~~insurance carrier or~~ employer.

~~D. The commission may increase the assessment established in section 23-1065 by not to exceed one-half of one per cent of such assessment in any one year to reimburse the special fund for its loss incurred under this section.~~

Sec. 16. Section 23-1065, Arizona Revised Statutes, is amended to read:

23-1065. <u>Special fund; purposes; investment committee</u>

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 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 ~~J~~ G. Such assessments shall be computed on the same premium basis as provided for in section 23-961, subsections ~~J~~ G, ~~K~~ H, ~~L~~ I, ~~M~~ J and ~~N~~ 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 this 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 employer or carrier is responsible under this paragraph shall be calculated solely on physical, medically rated permanent impairment and not on occupational or other factors.

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

C. In claims involving an employee who has a preexisting physical impairment that is not industrially-related and, whether congenital or due to injury or disease, is of such seriousness as to constitute a hindrance or obstacle to employment or to obtaining reemployment if the employee becomes unemployed, and the impairment equals or exceeds a ten per cent permanent impairment evaluated in accordance with the American medical association guides to the evaluation of permanent impairment, and the employee thereafter suffers an additional permanent impairment not of the type specified in section 23-1044, subsection B, the claim involving the subsequent impairment

is eligible for reimbursement, as provided by subsection D of this section, under the following conditions:

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

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

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

(a) Epilepsy.

(b) Diabetes.

(c) Cardiac disease.

(d) Arthritis.

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

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

(g) Residual disability from poliomyelitis.

(h) Cerebral palsy.

(i) Multiple sclerosis.

(j) Parkinson's disease.

(k) Cerebral vascular accident.

(l) Tuberculosis.

(m) Silicosis.

(n) Psychoneurotic disability following treatment in a recognized medical or mental institution.

(o) Hemophilia.

(p) Chronic osteomyelitis.

(q) Hyperinsulinism.

(r) Muscular dystrophies.

(s) Arteriosclerosis.

(t) Thrombophlebitis.

(u) Varicose veins.

(v) Heavy metal poisoning.

(w) Ionizing radiation injury.

(x) Compressed air sequelae.

(y) Ruptured intervertebral disk.

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

D. The employer or insurance carrier shall notify the commission of its intent to claim reimbursement for an eligible claim under subsection B or C of this section not later than the time the employer or insurance carrier notifies the commission pursuant to section 23-1047, subsection A. Upon

1 receiving notice the commission may expend funds from the special fund
2 created by this section for travel and discovery procedures and for the
3 employment of such independent legal, medical, rehabilitation, claims or
4 labor market consultants or experts as may be deemed necessary by the
5 commission to assist in the determination of the liability of the special
6 fund, if any, under subsection B or C of this section. In the event there is
7 any dispute regarding liability to the special fund pursuant to subsection B
8 or C of this section, the commission shall not delay the issuance of a
9 permanent award pursuant to section 23-1047, subsection B.
10 E. If the special fund created by this section is determined to be
11 liable under either subsection B or C of this section, the employer or
12 insurance carrier that is primarily liable shall pay the entire amount of the
13 award to the injured employee and the commission shall by rule provide for
14 the reimbursement of the employer or insurance carrier on an annual basis.
15 In any case arising out of subsection B or C of this section, the written
16 approval of the special fund is required for the compromise of any claim made
17 pursuant to section 23-1023. In any such case, written approval shall not be
18 unreasonably withheld by the special fund, carrier, self-insured employer or
19 other person responsible for the payment of compensation. Failure to obtain
20 the written approval of the special fund shall not cause the injured worker
21 to lose any benefits but ends the special fund's liability for reimbursement
22 and makes the employer or carrier solely responsible for the payment of the
23 remaining benefits.
24 F. The employer or insurance carrier shall make its claim for
25 reimbursement to the commission no later than November 1 each year, for
26 payments made pursuant to subsection B or C of this section during the twelve
27 months prior to October 1 each year. Claims shall be paid before December 31
28 each year. If the total annual reserved liabilities of the special fund
29 obligated under subsections B and C of this section exceed six million
30 dollars, as determined by the annual actuarial study performed pursuant to
31 subsection I of this section, the commission, after notice and a hearing, may
32 levy an additional assessment under subsection A of this section of up to
33 one-half per cent to meet such liabilities. Any insurance carrier or
34 employer who may be adversely affected by the additional assessment may at
35 any time prior to the sixtieth day after such additional assessment is
36 ordered file a complaint challenging the validity of the additional
37 assessment in the superior court in Maricopa county for a judicial review of
38 the additional assessment. On judicial review the determination of the
39 commission shall be upheld if supported by substantial evidence in the record
40 considered as a whole.
41 G. In the event the injured employee is awarded additional
42 compensation, under subsection A of this section, the commission retains
43 jurisdiction to amend, alter or change the award upon a change in the
44 physical condition of the injured employee resulting from the injury.

1 H. On receiving notice that the special fund may be liable under this
2 chapter, the commission may spend monies from the special fund established by
3 this section for expenses that are necessary to assist in the processing,
4 payment or determination of liability of the fund. These expenses may
5 include travel, discovery procedures and employing any legal, medical,
6 rehabilitation, claims or labor market consultant, examiner or expert.
7 I. The commission shall cause an annual actuarial study of the special
8 award fund to be made by a qualified actuary who is a member of the society
9 of actuaries. The actuary shall make specific recommendations for
10 maintaining the fund on a sound actuarial basis. The actuarial study shall
11 be completed on or before September 1.
12 J. The special fund of the commission consists of all monies from
13 premiums and assessments, except penalties assessed pursuant to this chapter,
14 received and paid into the fund, property and securities acquired by the use
15 of monies in the fund, interest earned on monies in the fund and other monies
16 derived from the sale, use or lease of properties belonging to the fund. The
17 special fund created by this section shall be administered by the director of
18 the industrial commission, subject to the authority of the industrial
19 commission. The director of the commission with approval of the investment
20 committee, in the administration of the special fund, may provide loans,
21 subject to repayment, budgetary review and legislative appropriation, to the
22 administrative fund for the purposes and subject to section 23-1081, acquire
23 real property and acquire or construct a building or other improvements on
24 the real property as may be necessary to house, contain, furnish, equip and
25 maintain offices and space for departmental and operational facilities of the
26 commission. The commission when using space constructed pursuant to this
27 section shall make equal payments of rent on a semiannual basis, which shall
28 be deposited in the special fund. The investment committee shall determine
29 the amount of the rent, which must be at least equal to or greater than that
30 determined by the joint committee on capital review for buildings of similar
31 design and construction as provided by section 41-792.01.
32 K. There is established an investment committee consisting of the
33 director and the chairman of the commission and three persons knowledgeable
34 in investments and economics appointed by the governor. Of the members
35 appointed by the governor, one shall be a professional in the investment
36 business, one shall represent workers' compensation insurers and one shall
37 represent self-insurers. The term of members appointed by the governor is
38 three years, which shall begin on July 1 and end on June 30 three years
39 later. The committee shall prescribe by rule investment policies and
40 supervise the investment activities of the special fund.
41 L. Each member of the investment committee, other than the director of
42 the commission, is eligible to receive from the special fund:
43 1. Compensation of fifty dollars for each day while in actual
44 attendance at meetings of the investment committee.

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

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

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

O. The investment committee, by resolution, may invest and reinvest the surplus or reserves in the funds established under this chapter in any legal investments authorized under section ~~38-719~~ 38-718.

P. In addition to the investments authorized under section ~~38-719~~ 38-718, the investment committee may approve the investment in real property and improvements on real property to house and maintain offices of the commission, including spaces for its departmental and operational facilities. Title to the real estate and improvements on the real estate vests in the special fund of the commission, and the assets become part of the fund as provided by this section.

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

Sec. 17. Section 23-1081, Arizona Revised Statutes, is amended to read:

23-1081. <u>Administrative fund; purposes and administration</u>

A. The administrative fund is established to provide for all expenses of the industrial commission in carrying out its powers and duties under this title. Except for monies from cash deposits or surety bonds in the separate account established by section 23-527, the administrative fund and expenditures therefrom shall be subject to budgetary review and legislative appropriation as expenditures from other state funds. Vouchers or claims prepared for any purpose other than for payment of benefits shall be processed as prescribed by section 35-181.01 and the rules of the director of the department of administration. The industrial commission shall annually fix the rate of the tax, not to exceed three per cent, to be paid to the state treasurer for credit to the administrative fund pursuant to section 23-961, subsection ~~J~~ G in an amount that is no more than necessary to cover the actual expenses of the industrial commission in carrying out its powers

and duties under this title. Monies for expenditure from the administrative fund shall be appropriated by the legislature. All money and securities in the fund shall be held in trust and invested by the treasurer.

B. The administrative fund shall be no less than self-supporting with respect to the expenses of the industrial commission and other expenditures from the administrative fund as provided under this chapter. Unless the special fund established by section 23-1065 is not on an actuarially sound basis as determined pursuant to section 23-1065, subsection I, any surplus or deficit in the revenue provided under section 23-961 above or below the expenses of the industrial commission and other expenditures from the administrative fund as provided under this chapter shall be included in the calculation of the rate to be fixed for the following year pursuant to section 23-961, subsection ~~J~~ G. If the special fund is not on an actuarially sound basis as determined pursuant to section 23-1065, subsection I, notwithstanding any other provision of this section, at least once each fiscal year, the industrial commission shall determine if there is a surplus in the revenue provided under section 23-961 that is greater than the expenses of the industrial commission and other expenditures from the administrative fund as provided under this chapter. On notice from the industrial commission to the state treasurer, the surplus shall be transferred to the special fund.

Sec. 18. Industrial commission; guaranty fund; transfer

Not less than thirty days prior to the effective date of this act, the industrial commission shall transfer $222,848,153 in assets acceptable to the Arizona property and casualty insurance guaranty fund from the special fund established by section 23-1065, Arizona Revised Statutes, as amended by this act, to the Arizona property and casualty insurance guaranty fund established by section 20-662, Arizona Revised Statutes, as amended by this act, for deposit in the workers' compensation insurance account.

Sec. 19. Effective date

This act is effective from and after June 30, 2015.

APPROVED BY THE GOVERNOR APRIL 23, 2014.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 24, 2014.

Passed the House April 17, 2014,

by the following vote: 46 Ayes,

11 Nays, 3 Not Voting

Speaker of the House

Cheryl Laube

Chief Clerk of the House

Passed the Senate March 4, 2014,

by the following vote: 30 Ayes,

0 Nays, 0 Not Voting

President of the Senate

Susan Reeves

Assistant Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR
This Bill was received by the Governor this

21 day of April, 2014,

at 11:30 o'clock A M.

Michaela Howard

Secretary to the Governor

Approved this 23rd day of

April, 2014,

at 10:58 o'clock A M.

Janice K. Brewer

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 24th day of April, 2014,

at 8:57 o'clock a M.

Ken Bennett

Secretary of State

S.B. 1181