workers' compensation; rates; firefighters; cancer.

State of Arizona Senate Fifty-fifth Legislature First Regular Session 2021

CHAPTER 229

SENATE BILL 1451

AN ACT

AMENDING SECTIONS 20-343, 20-359, 20-371, 23-901 AND 23-901.01, ARIZONA REVISED STATUTES; AMENDING TITLE 23, CHAPTER 6, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 23-901.09; AMENDING TITLE 23, CHAPTER 6, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTION 23-971; RELATING TO WORKERS' COMPENSATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 20-343, Arizona Revised Statutes, is amended to read:

20-343. <u>Definitions</u>

In this article, unless the context otherwise requires:

- 1. "Board" means the workers' compensation appeals board established by section 20-367.
- 2. "Classification plan" means the plan or system that groups industries, occupations or operations with a similar exposure to loss into rate classifications for workers' compensation rating, rate making and statistical reporting purposes.
- 3. "Designated rating organization" means the rating organization selected by the director pursuant to section 20-371, subsection F.
- 4. "Designated statistical agent" means the organization designated by the director under section 20-371, subsection D.
- 5. "Experience rating plan" means a mandatory rating plan for all eligible insureds that establishes a workers' compensation rating procedure that compares the actual loss experience of individual insureds to the industry average for the same classification with differences reflected in the insured's premium.
- 6. "Schedule rating plan" means a rating plan by which an insurer increases or decreases workers' compensation rates to reflect the individual risk characteristics or the loss ratios of the subject of insurance.
- 7. "Statistical plan" means the plan, system or arrangement used in collecting workers' compensation data.
- 8. "Uniform plan" means a workers' compensation statistical plan, classification plan or experience rating plan designated by the director pursuant to section 20-371, subsection J.
- 9. "Uniform rate filing" means the rate filing that is made by the designated rating organization and that includes all of the workers' compensation rates to which insurers transacting workers' compensation insurance in this state shall adhere except as provided in section 20-359, subsection SUBSECTIONS A AND B. Uniform rate filing also includes the expected loss ratios, ballast factors and other factors promulgated by the designated rating organization for the uniform experience rating plan.
- 10. "Workers' compensation rates" means rates for workers' compensation and employers' liability insurance incident to and written in connection with workers' compensation.
- Sec. 2. Section 20-359, Arizona Revised Statutes, is amended to read:

20-359. Deviations from filed workers' compensation rates

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

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- 1. Up to six uniform percentage deviations that decrease or increase the statewide rate portion of the rating organization's rate filing. If more than one deviation is filed by an insurer, each deviation must be established consistent with the underwriting rules that are based on criteria that would lead to a logical distinction of potential risk.
- 2. A subclassification rate related rule that deviates from the rules or schedule rating plan filed by the insurer's rating organization. An insurer shall not simultaneously apply a deviation and a schedule rating to the same insured risk.
- B. IN ADDITION TO THE SIX UNIFORM PERCENTAGE DEVIATIONS AUTHORIZED UNDER SUBSECTION A, PARAGRAPH 1 OF THIS SECTION, INSURERS COVERING FIREFIGHTERS AND FIRE INVESTIGATORS MAY FILE ONE UNIFORM PERCENTAGE THAT INCREASES THE STATEWIDE RATES UNDER DEVIATION THE ORGANIZATION'S RATE FILING FOR THE CLASS CODES **ASSOCIATED** WITH FIREFIGHTERS AND FIRE INVESTIGATORS TO ADDRESS THE ANTICIPATED INCREASE IN LOSSES AND EXPENSES FOR CLAIMS THAT ARE COMPENSABLE PURSUANT TO SECTION 23-901.09. THE DEVIATION FILING SHALL BE ACCOMPANIED BY ANALYSIS FROM AN ACTUARY THAT SUBSTANTIVELY ILLUSTRATES THE BASIS FOR THE RATE INCREASE, INCLUDING INFORMATION MADE AVAILABLE BY THE INDUSTRIAL COMMISSION OF ARIZONA PURSUANT TO SECTION 23-971 AND THE ANTICIPATED AND, WHEN AVAILABLE, ACTUAL COMBINED LOSS RATIO, CLAIM FREQUENCY AND CLAIM SEVERITY ASSOCIATED WITH THESE CLAIMS. THE SUPPORTING DOCUMENTATION SUBMITTED WITH THE FILING MUST BE SUFFICIENT TO ALLOW THE DEPARTMENT TO ASSESS THE REASONABLENESS OF THE INSURER'S ASSUMPTIONS AND JUSTIFICATION FOR THE DEVIATION AND SHALL INCLUDE DATA RELATED TO WORKERS' COMPENSATION INDEMNITY AND MEDICAL CLAIMS AND ADMINISTRATIVE EXPENSES ASSOCIATED SPECIFICALLY WITH PRESUMPTIVE COVERAGE RELATED TO WORKERS' COMPENSATION CLAIMS. THE INSURER MAY USE DATA OR ANALYSIS FROM ANY OF THE FOLLOWING SOURCES:
 - 1. THE INSURED OR INSURER.
 - 2. SELF-FUNDED EMPLOYERS PROVIDING WORKERS' COMPENSATION.
 - 3. THE INDUSTRIAL COMMISSION OF ARIZONA.
 - 4. A RISK RETENTION POOL.
- 5. STUDIES AND INFORMATION ILLUSTRATING THE STATE AND NATIONAL FREQUENCY OF CANCER AMONG FIREFIGHTERS AND FIRE INVESTIGATORS.
 - 6. THE ASSIGNED RISK POOL OR ASSIGNED RISK.
- 7. CLAIMS AND EXPENSE DATA FROM OTHER RELEVANT LINES OF INSURANCE SUCH AS LONG-TERM DISABILITY INSURANCE, GROUP OR INDIVIDUAL MAJOR MEDICAL INSURANCE OR LONG-TERM CARE INSURANCE.
 - 8. OTHER AVAILABLE CANCER-RELATED STATISTICS.
- 9. RELEVANT INCURRED BUT NOT REPORTED WORKERS' COMPENSATION CLAIMS DATA.
- C. THE DIRECTOR MAY USE INDEPENDENT CONTRACTOR EXAMINERS TO ANALYZE THE SUPPORTING JUSTIFICATION OF A REQUESTED DEVIATION UNDER SUBSECTION B OF THIS SECTION PURSUANT TO SECTION 20-358, SUBSECTION D.

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D. NOTWITHSTANDING SUBSECTION A, PARAGRAPH 2 OF THIS SECTION, IN ADDITION TO THE DEVIATION FILING AUTHORIZED UNDER SUBSECTION B OF THIS SECTION, INSURERS MAY FILE AND APPLY A SCHEDULE RATING PLAN TO ADJUST PREMIUMS ASSOCIATED WITH FIREFIGHTERS AND FIRE INVESTIGATORS CLASS CODES, BASED ON LOSS CONTROL PROGRAMS OR ACTIVITIES UNDERTAKEN BY THE INSURER TO REDUCE LOSSES ASSOCIATED WITH SECTION 23-901.09. THE SCHEDULE RATING PLAN MUST BE FILED WITH AND APPROVED BY THE DIRECTOR AND SHALL BE IN ADDITION TO AND SEPARATE FROM ANY OTHER SCHEDULE RATING PLAN AVAILABLE TO THE INSURER.

B. Each deviation filed shall be on file with the director for a waiting period of at least thirty days before it becomes effective, EXCEPT THAT A DEVIATION FILED PURSUANT TO SUBSECTION B OF THIS SECTION SHALL BE ON FILE WITH THE DIRECTOR FOR AT LEAST SIXTY DAYS BEFORE IT BECOMES EFFECTIVE. On written application by the insurer making the filing, the director may authorize a filing to become effective before the waiting period expires. A deviation that is filed pursuant to subsection A, paragraph 1 of this section and that is not disapproved by the director expires the following December 31 at midnight in this state unless the director terminates the deviation sooner. A deviation that is filed pursuant to subsection A, paragraph 2 of this section continues until the insurer withdraws the deviation or the director determines that the deviation no longer meets the standards prescribed in section 20-356, paragraph 1. At any time the director may require an insurer to actuarially support a deviation. The insurer that files the deviation shall simultaneously send a copy of the filing to the rating organization of which it is a member and to any designated rating organization.

c. F. A rating organization shall notify the director if the organization disapproves any deviation relating to workers' compensation insurance. The director shall notify the industrial commission OF ARIZONA of the disapproval within ten days after receipt of the disapproval from the rating organization.

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

20-371. Rate administration

A. The director shall adopt reasonable rules and statistical plans that are reasonably adapted to each of the rating systems on file with the director and that may be modified from time to time. An insurer shall use the rules and statistical plans to record and report its loss and countrywide expense experience in order that the experience of all insurers may be made available, at least annually, in sufficient form and detail to aid the director in determining whether rating systems comply with the standards set forth in this article. The rules and plans may also provide for the recording and reporting of expense experience items which THAT are especially applicable to this state and THAT are not

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susceptible to determination by prorating of countrywide expense experience.

- B. In adopting the rules and plans, the director shall give due consideration to the rating systems on file with the director, and, in order that the rules and plans may be as uniform as is practicable among the several states, to the rules and to the form of plans used for comparable rating systems in other states.
- C. An insurer is not required to record or report its loss experience on a classification basis that is inconsistent with the uniform classification plan.
- D. The director may designate an organization the director deems qualified, other than an insurer that has outstanding obligations under a policy of workers' compensation insurance in this state, to act as the director's statistical agent. The statistical agent shall assist the director in gathering and compiling workers' compensation experience and performing other related services as the director may specify. The compilations shall be made available subject to reasonable rules adopted by the director, to insurers and rating organizations, but no insurer shall be required to file its experience with an organization of which it is not a member.
- E. Every insurer shall report its loss and expense experience to the rating organization of which it is a member. The rating organization shall report the insurer's experience to the designated statistical agent. If the rating organization is unable to report the experience of its member insurers to the designated statistical agent, every insurer that is a member of the rating organization shall directly report its experience to the designated statistical agent.
- F. If there is more than one licensed rating organization that meets the requirements of section 20-363, subsection E, the director shall designate one of the organizations as the designated rating organization for the purpose of annually making and filing with the director statewide workers' compensation insurance rates that become effective on January 1.
- G. The designated rating organization shall annually file its rate filing with the director on or before August 1 for rates that become effective on January 1. The director shall disapprove the filing if it does not meet the standards of section 20-356, paragraph 1. An insurer transacting workers' compensation insurance in this state shall adhere to the expected loss ratios, ballast factors and other experience rating factors and to the statewide rates and other rating values made by the designated rating organization for the uniform rate filing, except that an insurer may deviate from the statewide rate portion of the uniform rate filing according to section 20-359, subsection SUBSECTIONS A AND B.
- H. The director may allow the designated statistical agent and designated rating organization to charge licensed rating organizations

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 that operate in this state a reasonable fee for their services. The licensed rating organizations shall pay the fees on a ratable basis.

- I. To further the uniform administration of rate regulatory laws, the director and every insurer and rating organization may exchange information and experience data with insurance supervisory officials, insurers and rating organizations in other states and may consult with them with respect to rate making and the application of rating systems.
- J. If more than one rating organization meets the requirements of section 20-363, subsection E, the director shall designate the statistical plan, classification plan or experience rating plan adopted by the designated rating organization or any other rating organization, or the plans of another state, as the uniform statistical plan, the uniform classification plan or the uniform experience rating plan.
- K. If the director does not designate a uniform statistical plan, a uniform classification plan or a uniform experience rating plan pursuant to this section, each insurer shall adhere to the statistical plan, classification plan, and experience rating plan adopted by the rating organization of which the insurer is a member in this state.
- Sec. 4. Section 23-901, Arizona Revised Statutes, is amended to read:

23-901. Definitions

In this chapter, unless the context otherwise requires:

- 1. "Award" means the finding or decision of an administrative law judge or the commission as to the amount of compensation or benefit due an injured employee or the dependents of a deceased employee.
- 2. "Client" means an individual, association, company, firm, partnership, corporation or any other legally recognized entity that is subject to this chapter and that enters into a professional employer agreement with a professional employer organization.
- 3. "Co-employee" means every person employed by an injured employee's employer.
 - 4. "Commission" means the industrial commission of Arizona.
- 5. "Compensation" means the compensation and benefits provided by this chapter.
 - 6. "Employee", "workman", "worker" and "operative" means:
- (a) Every person in the service of this state or a county, city, town, municipal corporation or school district, including regular members of lawfully constituted police and fire departments of cities and towns, whether by election, appointment or contract of hire.
- (b) Every person in the service of any employer subject to this chapter, including aliens and minors legally or illegally allowed to work for hire, but not including a person whose employment is both:
 - (i) Casual.
- (ii) Not in the usual course of the trade, business or occupation of the employer.

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- (c) Lessees of mining property and the lessees' employees and contractors engaged in the performance of work that is a part of the business conducted by the lessor and over which the lessor retains supervision or control are within the meaning of this paragraph employees of the lessor, and are deemed to be drawing wages as are usually paid employees for similar work. The lessor may deduct from the proceeds of ores mined by the lessees the premium required by this chapter to be paid for such employees.
- (d) Regular members of volunteer fire departments pursuant to title 48, chapter 5, article 1, regular firefighters of any volunteer fire department, including private fire protection service organizations, organized pursuant to title 10, chapters 24 through 40, volunteer firefighters serving as members of a fire department of any incorporated city or town or an unincorporated area without pay or without full pay and on a part-time basis, and voluntary policemen and volunteer firefighters serving in any incorporated city, town or unincorporated area without pay or without full pay and on a part-time basis, are deemed to be employees, but for the purposes of this chapter, the basis for computing wages for premium payments and compensation benefits for regular members of volunteer fire departments organized pursuant to title 48, chapter 5, article 1, or organized pursuant to title 10, chapters 24 through 40, regular members of any private fire protection service organization, volunteer firefighters and volunteer policemen of these departments or organizations shall be the salary equal to the beginning salary of the same rank or grade in the full-time service with the city, town, volunteer fire department or private fire protection service organization, provided if there is no full-time equivalent then the salary equivalent shall be as determined by resolution of the governing body of the city, town or volunteer fire department or corporation.
- (e) Members of the department of public safety reserve, organized pursuant to section 41-1715, are deemed to be employees. For the purposes of this chapter, the basis for computing wages for premium payments and compensation benefits for a member of the department of public safety reserve who is a peace officer shall be the salary received by officers of the department of public safety for the officers' first month of regular duty as an officer. For members of the department of public safety reserve who are not peace officers, the basis for computing premiums and compensation benefits is \$400 a month.
- (f) Any person placed in on-the-job evaluation or in on-the-job training under the department of economic security's temporary assistance for needy families program or vocational rehabilitation program shall be deemed to be an employee of the department for the purpose of coverage under the state workers' compensation laws only. The basis for computing premium payments and compensation benefits shall be \$200 per month. Any person receiving vocational rehabilitation services under the department

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 of economic security's vocational rehabilitation program whose major evaluation or training activity is academic, whether as an enrolled attending student or by correspondence, or who is confined to a hospital or penal institution, shall not be deemed to be an employee of the department for any purpose.

- (g) Regular members of a volunteer sheriff's reserve, which may be established by resolution of the county board of supervisors, to assist the sheriff in the performance of the sheriff's official duties. A roster of the current members shall monthly be certified to the clerk of the board of supervisors by the sheriff and shall not exceed the maximum number authorized by the board of supervisors. Certified members of an authorized volunteer sheriff's reserve shall be deemed to be employees of the county for the purpose of coverage under the Arizona workers' compensation laws and occupational disease disability laws and shall be entitled to receive the benefits of these laws for any compensable injuries or disabling conditions that arise out of and occur in the course of the performance of duties authorized and directed by the sheriff. Compensation benefits and premium payments shall be based on the salary received by a regular full-time deputy sheriff of the county involved for the first month of regular patrol duty as an officer for each certified member of a volunteer sheriff's reserve. This subdivision does not provide compensation coverage for any member of a sheriff's posse who is not a certified member of an authorized volunteer sheriff's reserve except as a participant in a search and rescue mission or a search and rescue training mission.
- (h) A working member of a partnership may be deemed to be an employee entitled to the benefits provided by this chapter on written acceptance, by endorsement, at the discretion of the insurance carrier for the partnership of an application for coverage by the working partner. The basis for computing premium payments and compensation benefits for the working partner shall be an assumed average monthly wage of not less than \$600 nor OR more than the maximum wage provided in section 23-1041 and is subject to the discretionary approval of the insurance carrier. Any compensation for permanent partial or permanent total disability payable to the partner is computed on the lesser of the assumed monthly wage agreed to by the insurance carrier on the acceptance of the application for coverage or the actual average monthly wage received by the partner at the time of injury.
- (i) The sole proprietor of a business subject to this chapter may be deemed to be an employee entitled to the benefits provided by this chapter on written acceptance, by endorsement, at the discretion of the insurance carrier of an application for coverage by the sole proprietor. The basis for computing premium payments and compensation benefits for the sole proprietor is an assumed average monthly wage of not less than \$600 mor OR more than the maximum wage provided by section 23-1041 and is

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subject to the discretionary approval of the insurance carrier. Any compensation for permanent partial or permanent total disability payable to the sole proprietor shall be computed on the lesser of the assumed monthly wage agreed to by the insurance carrier on the acceptance of the application for coverage or the actual average monthly wage received by the sole proprietor at the time of injury.

- (j) A member of the Arizona national guard, Arizona state guard or unorganized militia shall be deemed a state employee and entitled to coverage under the Arizona workers' compensation law at all times while the member is receiving the payment of the member's military salary from this state under competent military orders or on order of the governor. Compensation benefits shall be based on the monthly military pay rate to which the member is entitled at the time of injury, but not less than a salary of \$400 per month, nor OR more than the maximum provided by the workers' compensation law. Arizona compensation benefits shall not inure to a member compensable under federal law.
- (k) Certified ambulance drivers and attendants who serve without pay or without full pay on a part-time basis are deemed to be employees and entitled to the benefits provided by this chapter and the basis for computing wages for premium payments and compensation benefits for certified ambulance personnel shall be \$400 per month.
- (1) Volunteer workers of a licensed health care institution may be deemed to be employees and entitled to the benefits provided by this chapter on written acceptance by the insurance carrier of an application by the health care institution for coverage of such volunteers. The basis for computing wages for premium payments and compensation benefits for volunteers shall be \$400 per month.
- (m) Personnel who participate in a search or rescue operation or a search or rescue training operation that carries a mission identifier assigned by the division of emergency management as provided in section 35-192.01 and who serve without compensation as volunteer state employees. The basis for computation of wages for premium purposes and compensation benefits is the total volunteer man-hours recorded by the division of emergency management in a given quarter multiplied by the amount determined by the appropriate risk management formula.
- (n) Personnel who participate in emergency management training, exercises or drills that are duly enrolled or registered with the division of emergency management or any political subdivision as provided in section 26-314, subsection C and who serve without compensation as volunteer state employees. The basis for computation of wages for premium purposes and compensation benefits is the total volunteer man-hours recorded by the division of emergency management or political subdivision during a given training session, exercise or drill multiplied by the amount determined by the appropriate risk management formula.

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- (o) Regular members of the Arizona game and fish department reserve, organized pursuant to section 17-214. The basis for computing wages for premium payments and compensation benefits for a member of the reserve is the salary received by game rangers and wildlife managers of the Arizona game and fish department for the game rangers' and wildlife managers' first month of regular duty.
- (p) Every person employed pursuant to a professional employer agreement.
- (q) A working member of a limited liability company who owns less than fifty percent of the membership interest in the limited liability company.
- (r) A working member of a limited liability company who owns fifty percent or more of the membership interest in the limited liability company may be deemed to be an employee entitled to the benefits provided by this chapter on the written acceptance, by endorsement, of an application for coverage by the working member at the discretion of the insurance carrier for the limited liability company. The basis for computing wages for premium payments and compensation benefits for the working member is an assumed average monthly wage of \$600 or more but not more than the maximum wage provided in section 23-1041 and is subject to the discretionary approval of the insurance carrier. Any compensation for permanent partial or permanent total disability payable to the working member is computed on the lesser of the assumed monthly wage agreed to by the insurance carrier on the acceptance of the application for coverage or the actual average monthly wage received by the working member at the time of injury.
- (s) A working shareholder of a corporation who owns less than fifty percent of the beneficial interest in the corporation.
- or more of the beneficial interest in the corporation may be deemed to be an employee entitled to the benefits provided by this chapter on the written acceptance, by endorsement, of an application for coverage by the working shareholder at the discretion of the insurance carrier for the corporation. The basis for computing wages for premium payments and compensation benefits for the working shareholder is an assumed average monthly wage of \$600 or more but not more than the maximum wage provided in section 23-1041 and is subject to the discretionary approval of the insurance carrier. Any compensation for permanent partial or permanent total disability payable to the working shareholder is computed on the lesser of the assumed monthly wage agreed to by the insurance carrier on the acceptance of the application for coverage or the actual average monthly wage received by the working shareholder at the time of injury.
- 7. "General order" means an order applied generally throughout this state to all persons under jurisdiction of the commission.

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- 8. "Heart-related or perivascular injury, illness or death" means myocardial infarction, coronary thrombosis or any other similar sudden, violent or acute process involving the heart or perivascular system, or any death resulting therefrom, and any weakness, disease or other condition of the heart or perivascular system, or any death resulting therefrom.
- 9. "Insurance carrier" means every insurance carrier duly authorized by the director of the department of insurance and financial institutions to write workers' compensation or occupational disease compensation insurance in this state.
- 10. "Interested party" means the employer, the employee, or if the employee is deceased, the employee's estate, the surviving spouse or dependents, the commission, the insurance carrier or their representative.
- 11. "Mental injury, illness or condition" means any mental, emotional, psychotic or neurotic injury, illness or condition.
- 12. "Order" means and includes any rule, direction, requirement, standard, determination or decision other than an award or a directive by the commission or an administrative law judge relative to any entitlement to compensation benefits, or to the amount of compensation benefits, and any procedural ruling relative to the processing or adjudicating of a compensation matter.
- 13. "Personal injury by accident arising out of and in the course of employment" means any of the following:
- (a) Personal injury by accident arising out of and in the course of employment.
- (b) An injury caused by the wilful act of a third person directed against an employee because of the employee's employment, but does not include a disease unless resulting from the injury.
- (c) An occupational disease that is due to causes and conditions characteristic of and peculiar to a particular trade, occupation, process or employment, and not the ordinary diseases to which the general public is exposed, and subject to section 23-901.01 OR 23-901.09 or, for heart-related, perivascular or pulmonary cases, section 23-1105.
- 14. "Professional employer agreement" means a written contract between a client and a professional employer organization:
- (a) In which the professional employer organization expressly agrees to co-employ all or a majority of the employees providing services for the client. In determining whether the professional employer organization employs all or a majority of the employees of a client, any person employed pursuant to the terms of the professional employer agreement after the initial placement of client employees on the payroll of the professional employer organization shall be included.
 - (b) That is intended to be ongoing rather than temporary in nature.

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- (c) In which employer responsibilities for worksite employees, including hiring, firing and disciplining, are expressly allocated between the professional employer organization and the client in the agreement.
- 15. "Professional employer organization" means any person engaged in the business of providing professional employer services. Professional employer organization does not include a temporary help firm or an employment agency.
- 16. "Professional employer services" means the service of entering into co-employment relationships under this chapter to which all or a majority of the employees providing services to a client or to a division or work unit of a client are covered employees.
 - 17. "Special order" means an order other than a general order.
- 18. "Weakness, disease or other condition of the heart or perivascular system" means arteriosclerotic heart disease, cerebral vascular disease, peripheral vascular disease, cardiovascular disease, angina pectoris, congestive heart trouble, coronary insufficiency, ischemia and all other similar weaknesses, diseases and conditions, and also previous episodes or instances of myocardial infarction, coronary thrombosis or any similar sudden, violent or acute process involving the heart or perivascular system.
- 19. "Workers' compensation" means workmen's compensation as used in article XVIII, section 8, Constitution of Arizona.
- Sec. 5. Section 23-901.01, Arizona Revised Statutes, is amended to read:

23-901.01. <u>Occupational disease; proximate causation;</u> <u>definition</u>

- A. The occupational diseases as defined by section 23-901, paragraph 13, subdivision (c) shall be deemed to arise out of the employment only if all of the following six requirements exist:
- 1. There is a direct causal connection between the conditions under which the work is performed and the occupational disease.
- 2. The disease can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment.
- 3. The disease can be fairly traced to the employment as the proximate cause.
- 4. The disease does not come from a hazard to which workers would have been equally exposed outside of the employment.
- 5. The disease is incidental to the character of the business and not independent of the relation of employer and employee.
- 6. The disease after its contraction appears to have had its origin in a risk connected with the employment, and to have flowed from that source as a natural consequence, although it need not have been foreseen or expected.

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- B. Notwithstanding subsection A of this section and section 23-1043.01, $\overline{}$
- 1. any disease, infirmity or impairment of a firefighter's or peace officer's health that is caused by brain, bladder, rectal or colon cancer, lymphoma, leukemia or adenocarcinoma or mesothelioma of the respiratory tract and that results in disability or death is presumed to be an occupational disease as defined in section 23-901, paragraph 13, subdivision (c) and is deemed to arise out of employment.
- 2. Any disease, infirmity or impairment of a firefighter's health that is caused by buccal cavity and pharynx, esophagus, large intestine, lung, kidney, prostate, skin, stomach or testicular cancer or non-Hodgkin's lymphoma, multiple myeloma or malignant melanoma and that results in disability or death is presumed to be an occupational disease as defined in section 23-901, paragraph 13, subdivision (c) and is deemed to arise out of employment.
- C. The presumptions PRESUMPTION provided in subsection B of this section are IS granted if all of the following apply:
- 1. The firefighter or peace officer passed a physical examination before employment and the examination did not indicate evidence of cancer.
- 2. The <u>firefighter or</u> peace officer was assigned to hazardous duty for at least five years.
- 3. The firefighter or peace officer was exposed to a known carcinogen as defined by the international agency for research on cancer and informed the department of this exposure, and the carcinogen is reasonably related to the cancer.
- 4. For the presumption provided in subsection B, paragraph 2 of this section, the firefighter received a physical examination that is reasonably aligned with the national fire protection association standard on comprehensive occupational medical program for fire departments (NFPA 1582).
 - D. Subsection B of this section applies to BOTH OF THE FOLLOWING:
 - 1. PEACE OFFICERS CURRENTLY IN SERVICE.
- 2. Former firefighters or peace officers who are sixty-five years of age or younger and who are diagnosed with a cancer that is listed in subsection B of this section not more than fifteen years after the firefighter's or peace officer's last date of employment as a firefighter or peace officer.
- E. Subsection B of this section does not apply to cancers of the respiratory tract if there is evidence that the firefighter's or peace officer's exposure to cigarettes or tobacco products outside of the scope of the firefighter's or peace officer's official duties is a substantial contributing cause in the development of the cancer.
- F. The presumptions PRESUMPTION provided in subsection B of this section may be rebutted by a preponderance of the CLEAR AND CONVINCING evidence that there is a specific cause of the cancer other than an

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 occupational exposure to a carcinogen as defined by the international agency for research on cancer.

G. For the purposes of this section, —

1. "Firefighter" means a full-time firefighter who was regularly assigned to hazardous duty.

2. "peace officer" means a full-time peace officer who was regularly assigned to hazardous duty as a part of a special operations, special weapons and tactics, explosive ordinance disposal or hazardous materials response unit.

Sec. 6. Title 23, chapter 6, article 1, Arizona Revised Statutes, is amended by adding section 23-901.09, to read:

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23-901.09. <u>Presumption; cancers; firefighters and fire investigators; applicability; definitions</u>
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- A. NOTWITHSTANDING SECTION 23-901.01, SUBSECTION A AND SECTION 23-1043.01:
- 1. ANY DISEASE, INFIRMITY OR IMPAIRMENT OF A FIREFIGHTER'S OR FIRE INVESTIGATOR'S HEALTH THAT IS CAUSED BY BRAIN, BLADDER, RECTAL OR COLON CANCER, LYMPHOMA, LEUKEMIA OR ADENOCARCINOMA OR MESOTHELIOMA OF THE RESPIRATORY TRACT AND THAT RESULTS IN DISABILITY OR DEATH IS PRESUMED TO BE AN OCCUPATIONAL DISEASE AS DEFINED IN SECTION 23-901, PARAGRAPH 13, SUBDIVISION (c) AND IS DEEMED TO ARISE OUT OF EMPLOYMENT.
- 2. ANY DISEASE, INFIRMITY OR IMPAIRMENT OF A FIREFIGHTER'S OR FIRE INVESTIGATOR'S HEALTH THAT IS CAUSED BY BUCCAL CAVITY, PHARYNX, ESOPHAGUS, LARGE INTESTINE, LUNG, KIDNEY, PROSTATE, SKIN, STOMACH, OVARIAN, BREAST OR TESTICULAR CANCER OR NON-HODGKIN'S LYMPHOMA, MULTIPLE MYELOMA OR MALIGNANT MELANOMA AND THAT RESULTS IN DISABILITY OR DEATH IS PRESUMED TO BE AN OCCUPATIONAL DISEASE AS DEFINED IN SECTION 23-901, PARAGRAPH 13, SUBDIVISION (c) AND IS DEEMED TO ARISE OUT OF EMPLOYMENT.
- B. THE PRESUMPTIONS PROVIDED IN SUBSECTION A OF THIS SECTION ARE GRANTED IF ALL OF THE FOLLOWING APPLY:
- 1. THE FIREFIGHTER OR FIRE INVESTIGATOR PASSED A PHYSICAL EXAMINATION BEFORE EMPLOYMENT AND THE EXAMINATION DID NOT INDICATE EVIDENCE OF CANCER.
- 2. THE FIREFIGHTER OR FIRE INVESTIGATOR WAS ASSIGNED TO HAZARDOUS DUTY FOR AT LEAST FIVE YEARS.
- 3. FOR THE PRESUMPTION PROVIDED IN SUBSECTION A, PARAGRAPH 2 OF THIS SECTION AND FOR FIREFIGHTERS ONLY, THE FIREFIGHTER RECEIVED A PHYSICAL EXAMINATION THAT IS REASONABLY ALIGNED WITH THE NATIONAL FIRE PROTECTION ASSOCIATION STANDARD ON COMPREHENSIVE OCCUPATIONAL MEDICAL PROGRAM FOR FIRE DEPARTMENTS (NFPA 1582).
 - C. SUBSECTION A OF THIS SECTION APPLIES TO BOTH OF THE FOLLOWING:
 - 1. FIREFIGHTERS OR FIRE INVESTIGATORS CURRENTLY IN SERVICE.
- 2. FORMER FIREFIGHTERS OR FIRE INVESTIGATORS WHO ARE SIXTY-FIVE YEARS OF AGE OR YOUNGER AND WHO ARE DIAGNOSED WITH A CANCER THAT IS LISTED IN SUBSECTION A OF THIS SECTION NOT MORE THAN FIFTEEN YEARS AFTER THE

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FIREFIGHTER'S OR FIRE INVESTIGATOR'S LAST DATE OF EMPLOYMENT AS A FIREFIGHTER OR FIRE INVESTIGATOR.

- D. SUBSECTION A OF THIS SECTION DOES NOT APPLY TO CANCERS OF THE RESPIRATORY TRACT IF THERE IS EVIDENCE THAT THE FIREFIGHTER'S OR FIRE INVESTIGATOR'S EXPOSURE TO CIGARETTES OR TOBACCO PRODUCTS OUTSIDE OF THE SCOPE OF THE FIREFIGHTER'S OR FIRE INVESTIGATOR'S OFFICIAL DUTIES IS A SUBSTANTIAL CONTRIBUTING CAUSE IN THE DEVELOPMENT OF THE CANCER.
- E. THE PRESUMPTION PROVIDED IN SUBSECTION A OF THIS SECTION MAY BE REBUTTED BY CLEAR AND CONVINCING EVIDENCE THAT THERE IS A SPECIFIC CAUSE OF THE CANCER OTHER THAN AN OCCUPATIONAL EXPOSURE TO A CARCINOGEN AS DEFINED BY THE INTERNATIONAL AGENCY FOR RESEARCH ON CANCER.
 - F. FOR THE PURPOSES OF THIS SECTION:
- 1. "FIREFIGHTER" MEANS A FULL-TIME FIREFIGHTER WHO WAS REGULARLY ASSIGNED TO HAZARDOUS DUTY.
- 2. "FIRE INVESTIGATOR" MEANS A PERSON WHO IS EMPLOYED FULL-TIME BY A MUNICIPALITY OR FIRE DISTRICT AND WHO IS TRAINED IN THE PROCESS OF AND RESPONSIBLE FOR DETERMINING THE ORIGIN, CAUSE AND DEVELOPMENT OF A FIRE OR EXPLOSION.
- Sec. 7. Title 23, chapter 6, article 4, Arizona Revised Statutes, is amended by adding section 23-971, to read:

23-971. <u>Firefighter and fire investigator cancer claim</u> information; data sharing; definitions

- A. ALL INSURANCE CARRIERS, SELF-INSURING EMPLOYERS AND WORKERS' COMPENSATION POOLS SECURING WORKERS' COMPENSATION FOR FIREFIGHTERS AND FIRE INVESTIGATORS PURSUANT TO THIS CHAPTER SHALL COMPILE AND REPORT TO THE COMMISSION CLAIM AND CLAIM RESERVE INFORMATION FOR ALL CANCER-RELATED CLAIMS FILED BY OR ON BEHALF OF FIREFIGHTERS AND FIRE INVESTIGATORS.
- B. THE INFORMATION REQUIRED BY SUBSECTION A OF THIS SECTION SHALL INCLUDE ALL OF THE FOLLOWING:
 - 1. THE TYPE OF CANCER.
 - 2. THE TOTAL CLAIM COSTS.
- 3. THE CLAIM RESERVED BY THE INSURANCE CARRIER, SELF-INSURING EMPLOYER OR WORKERS' COMPENSATION POOL.
 - 4. ANY OTHER INFORMATION REQUESTED BY THE COMMISSION.
- C. NOTWITHSTANDING SUBSECTIONS A AND B OF THIS SECTION, THE COMMISSION MAY NOT REQUIRE OR OBTAIN ANY PERSONALLY IDENTIFIABLE INFORMATION FOR ANY CLAIMANT.
- D. THE COMMISSION SHALL COMPILE AND MAKE AVAILABLE TO INSURANCE CARRIERS, RATING ORGANIZATIONS, EMPLOYERS, PUBLIC SAFETY WORKERS AND WORKERS' COMPENSATION POOLS THE CLAIM-RELATED INFORMATION COLLECTED PURSUANT TO THIS SECTION TO ASSIST WITH THE SETTING OF WORKERS' COMPENSATION INSURANCE RATES AND TO ENSURE THE ADEQUATE RESERVING FOR CANCER CLAIMS FOR THE CLASS CODES ASSOCIATED WITH FIREFIGHTERS AND FIRE INVESTIGATORS.

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E. FOR THE PURPOSES OF THIS SECTION, "FIREFIGHTER" AND "FIRE INVESTIGATOR" HAVE THE SAME MEANINGS PRESCRIBED IN SECTION 23-901.09.

Sec. 8. Legislative intent

The Legislature intends that section 20-359, Arizona Revised Statutes, as amended by this act, authorize workers' compensation insurers covering firefighters and fire investigators to modify previously filed premium rates to cover anticipated increased claims costs resulting from the new coverages to be afforded those insureds pursuant to section 23-901.09, Arizona Revised Statutes, as added by this act, with rate adjustments to be effective from and after June 30, 2021.

APPROVED BY THE GOVERNOR APRIL 14, 2021.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 14, 2021.

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