

PROPOSED

SENATE AMENDMENTS TO H.B. 2204

(Reference to House engrossed bill)

1 Strike everything after the enacting clause and insert:

2 "Section 1. Section 23-902, Arizona Revised Statutes, is amended to
3 read:

4 23-902. Employers subject to chapter: exceptions

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

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

25 C. A person engaged in work for a business, and who while so engaged
26 is independent of that business in the execution of the work and not

1 subject to the rule or control of the business for which the work is done,
2 but is engaged only in the performance of a definite job or piece of work,
3 and is subordinate to that business only in effecting a result in
4 accordance with that business design, is an independent contractor.

5 D. A business that uses the services of an independent contractor
6 and the independent contractor may prove the existence of an independent
7 contractor relationship by executing a written agreement that complies with
8 this subsection. The written agreement shall evidence that the business
9 does not have the authority to supervise or control the actual work of the
10 independent contractor or the independent contractor's employees. A
11 written agreement executed in compliance with this subsection creates a
12 rebuttable presumption of an independent contractor relationship between
13 the parties if the written agreement contains a disclosure statement that
14 the independent contractor is not entitled to workers' compensation
15 benefits from the business. Unless the rebuttable presumption is overcome,
16 no premium may be collected by the carrier on payments by the business to
17 the independent contractor if a fully completed written agreement that
18 satisfies the requirements of this subsection is submitted to the carrier.
19 The written agreement shall be dated and contain the signatures of both
20 parties and, unless otherwise provided by law, shall state that the
21 business:

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

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

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

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

1 provided in this chapter. The requirements of this paragraph may be
2 satisfied by furnishing to the commission satisfactory proof that the
3 employer is a member of a workers' compensation pool approved by the
4 commission pursuant to section 23-961.01. The commission may require a
5 deposit or any other security from the employer for the payment of
6 compensation liabilities in an amount fixed by the commission, but not less
7 than \$100,000 dollars for workers' compensation liabilities. If the
8 employer does not fully comply with the provisions of this chapter relating
9 to the payment of compensation, the commission may revoke the authority of
10 the employer to pay compensation directly.

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

18 C. Insurance carriers that transact the business of workers'
19 compensation insurance in this state are subject to the rules of the
20 director of the department of insurance and financial institutions.

21 D. On application of an insurance carrier, the director of the
22 department of insurance and financial institutions may order the release to
23 the insurance carrier of all or part of the cash or securities that the
24 insurance carrier deposited before July 1, 2015 with the state treasurer
25 pursuant to this section. In determining whether to order the release of
26 all or part of the deposit, the director of the department of insurance and
27 financial institutions shall consider all of the following:

- 28 1. The financial condition of the insurance carrier.
- 29 2. The insurance carrier's liabilities for workers' compensation
30 loss and loss expenses in this state.
- 31 3. Whether the insurance carrier is subject to a finding of
32 hazardous condition, an order of supervision, a delinquency proceeding or
33 any other regulatory action in this state, the insurance carrier's state of

1 domicile or any other state in which the insurance carrier transacted the
2 business of insurance.

3 4. Any other factors the director of the department of insurance and
4 financial institutions determines are relevant to the application for
5 release of the deposit.

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

11 F. At least thirty days' notice shall be given by the insurance
12 carrier to the employer and to the commission of any cancellation or
13 nonrenewal of a policy if the cancellation or nonrenewal is at the election
14 of the insurance carrier. The insurance carrier shall promptly notify the
15 commission of any cancellation by the employer or failure of the employer
16 to renew the policy. The failure to give notice of nonrenewal if the
17 nonrenewal is at the election of the insurance carrier shall not extend
18 coverage beyond the policy period. An insurance carrier shall notify the
19 commission on a form prescribed by the commission that it has insured an
20 employer for workers' compensation promptly after undertaking to insure the
21 employer.

22 G. Every insurance carrier on or before March 1 of each year shall
23 pay to the state treasurer for the credit of the administrative fund, in
24 lieu of all other taxes on workers' compensation insurance, a tax of not
25 more than three percent on all premiums collected or contracted for during
26 the year ending December 31 next preceding, less the deductions from such
27 total direct premiums for applicable cancellations, returned premiums and
28 all policy dividends or refunds paid or credited to policyholders within
29 this state and not reapplied as premiums for new, additional or extended
30 insurance. Every self-insured employer, including workers' compensation
31 pools, on or before March 31 of each year shall pay a tax of not more than
32 three percent of the premiums that would have been paid by the employer if
33 the employer had been fully insured by an insurance carrier authorized to

1 transact workers' compensation insurance in this state during the preceding
2 calendar year. The commission shall adopt rules that shall specify the
3 premium plans and methods to be used for the calculation of rates and
4 premiums and that shall be the basis for the taxes assessed to self-insured
5 employers. The tax shall be not less than \$250 per annum and shall be
6 computed and collected by the commission and paid to the state treasurer
7 for the credit of the administrative fund at a rate not exceeding three
8 percent to be fixed annually by the industrial commission of Arizona. The
9 rate shall be no more than is necessary to cover the actual expenses of the
10 industrial commission of Arizona in carrying out its powers and duties
11 under this title. Any quarterly payments of tax pursuant to subsection
12 ~~I~~ J of this section shall be deducted from the tax payable pursuant to
13 this subsection.

14 H. An insurance carrier may reduce the amount of premiums paid by an
15 employer by up to five percent if all of the following apply:

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

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

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

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

25 I. AN INSURANCE CARRIER MAY REDUCE THE AMOUNT OF PREMIUMS PAID BY AN
26 EMPLOYER BY UP TO FIVE PERCENT IF BOTH OF THE FOLLOWING APPLY:

27 1. THE INSURED EMPLOYER IS PART OF A MEMBERSHIP ORGANIZATION WHOSE
28 MEMBERSHIP IS ALL OF THE FOLLOWING:

29 (a) COMPRISED OF PERSONS THAT ARE IN A SIMILAR OR RELATED LINE OF
30 COMMERCE.

31 (b) ORGANIZED TO PROMOTE AND IMPROVE BUSINESS CONDITIONS IN THAT
32 LINE OF COMMERCE.

1 (c) NOT ENGAGED IN A REGULAR BUSINESS OF A KIND THAT IS ORDINARILY
2 CARRIED ON FOR PROFIT AND WHOSE NET EARNINGS DO NOT INURE TO THE BENEFIT OF
3 ANY MEMBER.

4 2. THE INSURANCE CARRIER HAS A PROGRAM AGREEMENT WITH THE MEMBERSHIP
5 ORGANIZATION OF WHICH THE INSURED EMPLOYER IS A MEMBER.

6 ~~I~~. J. Any insurer that, pursuant to this section, paid or is
7 required to pay a tax of \$2,000 or more for the preceding calendar year
8 shall file a quarterly report, in a form prescribed by the commission,
9 accompanied by a payment in an amount equal to the tax due at the rates
10 prescribed in subsection G of this section for premiums determined pursuant
11 to subsection G of this section or an amount equal to twenty-five percent
12 of the tax paid or required to be paid pursuant to subsection G of this
13 section for the preceding calendar year. The quarterly payments shall be
14 due and payable on or before the last day of the month following the close
15 of the quarter and shall be made to the state treasurer.

16 ~~I~~. K. If an overpayment of taxes results from the method prescribed
17 in subsection ~~I~~ J of this section the industrial commission of Arizona may
18 refund the overpayment without interest.

19 ~~K~~. L. An insurer who fails to pay the tax prescribed by
20 subsection G or ~~I~~ J of this section or the amount prescribed by section
21 23-1065, subsection A is subject to a civil penalty equal to the greater of
22 \$25 or five percent of the tax or amount due plus interest at the rate of
23 one percent per month from the date the tax or amount was due.

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

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

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

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

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

15 _____
16 Sole proprietor Date
17 _____
18 Insurance carrier Date

19 Sec. 3. Section 23-1065, Arizona Revised Statutes, is amended to
20 read:

21 23-1065. Special fund; purposes; investment committee

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

1 jointly, for promotion of vocational rehabilitation of persons with
2 disabilities in industry.

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

9 1. The employer in whose employ the subsequent impairment occurred
10 or its insurance carrier is solely responsible for all temporary disability
11 compensation to which the employee is entitled and for an amount equal to
12 the permanent disability compensation provided by section 23-1044,
13 subsection B for the subsequent impairment. If the employee is determined
14 to have sustained no loss of earning capacity after the medically
15 stationary date, the employer or carrier shall pay him as a vocational
16 rehabilitation bonus the amount calculated under this paragraph as a lump
17 sum, which shall be a credit against any permanent compensation benefits
18 awarded in any subsequent proceeding. The amount of the vocational
19 rehabilitation bonus for which the employer or carrier is responsible under
20 this paragraph shall be calculated solely on physical, medically rated
21 permanent impairment and not on occupational or other factors.

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

1 to benefits for loss of earning capacity under section 23-1044, subsection
2 C or permanent total disability benefits under section 23-1045,
3 subsection B.

4 C. In claims involving an employee who has a preexisting physical
5 impairment that is not industrially-related and, whether congenital or due
6 to injury or disease, is of such seriousness as to constitute a hindrance
7 or obstacle to employment or to obtaining reemployment if the employee
8 becomes unemployed, and the impairment equals or exceeds a ten ~~per cent~~
9 PERCENT permanent impairment evaluated in accordance with the American
10 medical association guides to the evaluation of permanent impairment, and
11 the employee thereafter suffers an additional permanent impairment not of
12 the type specified in section 23-1044, subsection B, the claim involving
13 the subsequent impairment is eligible for reimbursement, as provided by
14 subsection D of this section, under the following conditions:

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

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

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

23 (a) Epilepsy.

24 (b) Diabetes.

25 (c) Cardiac disease.

26 (d) Arthritis.

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

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

30 (g) Residual disability from poliomyelitis.

31 (h) Cerebral palsy.

32 (i) Multiple sclerosis.

33 (j) Parkinson's disease.

- 1 (k) Cerebral vascular accident.
- 2 (l) Tuberculosis.
- 3 (m) Silicosis.
- 4 (n) Psychoneurotic disability following treatment in a recognized
5 medical or mental institution.
- 6 (o) Hemophilia.
- 7 (p) Chronic osteomyelitis.
- 8 (q) Hyperinsulinism.
- 9 (r) Muscular dystrophies.
- 10 (s) Arteriosclerosis.
- 11 (t) Thrombophlebitis.
- 12 (u) Varicose veins.
- 13 (v) Heavy metal poisoning.
- 14 (w) Ionizing radiation injury.
- 15 (x) Compressed air sequelae.
- 16 (y) Ruptured intervertebral disk.

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

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

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

15 F. The employer or insurance carrier shall make its claim for
16 reimbursement to the commission ~~no~~ NOT later than November 1 each year, for
17 payments made pursuant to subsection B or C of this section during the
18 twelve months ~~prior to~~ BEFORE October 1 each year. Claims shall be paid
19 before December 31 each year. If the total annual reserved liabilities of
20 the special fund obligated under subsections B and C of this section exceed
21 six million dollars, as determined by the annual actuarial study performed
22 pursuant to subsection I of this section, the commission, after notice and
23 a hearing, may levy an additional assessment under subsection A of this
24 section of up to one-half ~~percent~~ PERCENT to meet such liabilities. Any
25 insurance carrier or employer who may be adversely affected by the
26 additional assessment may at any time ~~prior to~~ BEFORE the sixtieth day
27 after such additional assessment is ordered file a complaint challenging
28 the validity of the additional assessment in the superior court in Maricopa
29 county for a judicial review of the additional assessment. On judicial
30 review the determination of the commission shall be upheld if supported by
31 substantial evidence in the record considered as a whole.

32 G. In the event the injured employee is awarded additional
33 compensation, under subsection A of this section, the commission retains

1 jurisdiction to amend, alter or change the award upon a change in the
2 physical condition of the injured employee resulting from the injury.

3 H. On receiving notice that the special fund may be liable under
4 this chapter, the commission may spend monies from the special fund
5 established by this section for expenses that are necessary to assist in
6 the processing, payment or determination of liability of the fund. These
7 expenses may include travel, discovery procedures and employing any legal,
8 medical, rehabilitation, claims or labor market consultant, examiner or
9 expert.

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

15 J. The special fund of the commission consists of all monies from
16 premiums and assessments, except penalties assessed pursuant to this
17 chapter, received and paid into the fund, property and securities acquired
18 by the use of monies in the fund, interest earned on monies in the fund and
19 other monies derived from the sale, use or lease of properties belonging to
20 the fund. The special fund created by this section shall be administered
21 by the director of the industrial commission, subject to the authority of
22 the industrial commission. The director of the commission with approval of
23 the investment committee, in the administration of the special fund, may
24 provide loans, subject to repayment, budgetary review and legislative
25 appropriation, to the administrative fund for the purposes and subject to
26 section 23-1081, acquire real property and acquire or construct a building
27 or other improvements on the real property as may be necessary to house,
28 contain, furnish, equip and maintain offices and space for departmental and
29 operational facilities of the commission. The commission when using space
30 constructed pursuant to this section shall make equal payments of rent on a
31 semiannual basis, which shall be deposited in the special fund. The
32 investment committee shall determine the amount of the rent, which must be
33 at least equal to or greater than that determined by the joint committee on

1 capital review for buildings of similar design and construction as provided
2 by section 41-792.01.

3 K. There is established an investment committee consisting of the
4 director and the chairman of the commission and three persons knowledgeable
5 in investments and economics appointed by the governor. Of the members
6 appointed by the governor, one shall be a professional in the investment
7 business, one shall represent workers' compensation insurers and one shall
8 represent self-insurers. The term of members appointed by the governor is
9 three years, which shall begin on July 1 and end on June 30 three years
10 later. The committee shall prescribe by rule investment policies and
11 supervise the investment activities of the special fund.

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

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

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

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

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

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

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

31 Q. The investment committee may appoint a custodian for the
32 safekeeping of all or any portion of the investments owned by the special
33 fund of the commission and may register stocks, bonds and other investments

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

12 Amend title to conform

J.D. MESNARD

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