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Arizona Statutes

Title 23 – Labor

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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 the 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 permitted 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.

(c) Lessees of mining property and their 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 organized pursuant to title 48, chapter 5, article 1, regular firemen of any volunteer fire department, including private fire protection service organizations, organized pursuant to title 10, chapters 24 through 40, volunteer firemen 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 firemen 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 firemen 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 their 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 four hundred dollars 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 two hundred dollars per month. Any person receiving vocational rehabilitation services under the department 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. 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 upon 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 shall not be construed to 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 upon 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 six hundred dollars nor 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 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 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 shall be an assumed average monthly wage of not less than six hundred dollars nor more than the maximum wage provided by 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 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 the state of Arizona under competent military orders or upon order of the governor. Compensation benefits shall be based upon the monthly military pay rate to which

the member is entitled at the time of injury, but not less than a salary of four hundred dollars per month, nor more than the maximum provided by the workers' compensation law. No Arizona compensation benefits shall 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 four hundred dollars per month.

(l) Volunteer workers of a licensed health care institution may be deemed to be employees and entitled to the benefits provided by this chapter upon 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 four hundred dollars 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.

(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 their first month of regular duty.

(p) Every person employed pursuant to a professional employer agreement.

7. "General order" means an order applied generally throughout the state to all persons under jurisdiction of the commission.

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 insurance to write workers' compensation or occupational disease compensation insurance in the state of Arizona.

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 thereof, 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.

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.

(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.

23-901.01. Occupational disease; proximate causation; definitions

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.

B. Notwithstanding subsection A of this section and section 23-1043.01, 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 aden carcinoma 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. The presumption 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 firefighter or 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.

C. Subsection B of this section applies to former firefighters and peace officers who are sixty-five years of age or younger.

D. Subsection B of this section does not apply to cancers of the respiratory tract if the firefighter or peace officer has smoked tobacco products.

E. 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.

23-901.02. Liability of last employer; exception

Where compensation is payable for an occupational disease the only employer liable shall be the employer in whose employment the employee was last injuriously exposed to the hazards of such disease but in the case of silicosis or asbestosis the only employer liable shall be the employer in whose employment the employee was last exposed to harmful quantities of silicon dioxide (SiO2) dust during a period of two years or more.

23-901.03. Appointment of committee of medical consultants for claims; qualifications, powers, duties and compensation

A. For each case submitted by a claimant for compensation the commission may, or if requested by an interested party shall, appoint a committee of expert consultants on occupational diseases, three licensed physicians in good professional standing, each of whom shall have had at the time of appointment, and immediately prior thereto, at least five years' practice in the diagnosis, care and treatment of the particular disease or diseases for which the claim is submitted and the interpretation of x-ray films thereof.

B. The Arizona state medical association may, at least annually, certify to the commission the names of all licensed physicians within the state who have the qualifications specified in this section, and if such certification is made, then the appointment shall be made from the list so certified by the medical association.

C. There also shall be appointed by the commission an industrial hygienist to serve as an advisor to the committee. Such industrial hygienist shall render reports to the committee when asked to do so by the committee or the commission.

D. After filing a claim for compensation under this chapter for an occupational disease, the commission may, or if requested by an interested party shall, direct an examination of and report upon the claimant by the committee of expert consultants, or one of them, including such x-ray and other pathological examinations and tests as in their opinion may be necessary for the purpose of determining diagnosis, disablement, causal relation to the employment and the nature and type of medical treatment, hospitalization and other care required. If the claim is not controverted as to any medical fact, the examination and report of one member of the committee shall be deemed the examination and report of the committee. If the claim is controverted as to any medical fact, the report shall be made by the full committee after a physical examination by at least one member thereof. The findings and opinions of a majority of the committee shall constitute the findings and opinion of the committee. The contents of the report of the committee when placed in the record shall constitute prima facie evidence of fact as to the matter contained therein. The committee or any member thereof making the report shall be subject to examination upon demand of any interested party. Copies of the report shall be sent to all parties interested.

E. The committee, or any member thereof, in order to assist in reaching a conclusion may require the attending physician or director of a hospital or sanitarium or other place in which treatment or care is being given, or has been given, to attend at a convenient time and place to consult with the committee or any member thereof, and describe the nature and type

of care and treatment and furnish any other evidence which the committee, or any member thereof, desires.

F. When a claim for death benefits is filed, the committee may examine all available evidence pertaining to the claim and may make findings and report thereon. The report shall constitute prima facie evidence of fact as to the matters contained therein.

G. The commission upon the application of an interested party shall direct the committee or a member thereof, to make examinations of claimants, review the findings of special medical examiners, read and review the files of compensation cases when necessary and render to the commission an opinion as to the findings in such cases.

H. The commission shall fix the compensation of the members of the committees and advisors for services rendered which shall be paid from the administrative fund.

23-901.04. Compensation precluded by misconduct, self-exposure or disobedience of orders of commission; definition

A. Notwithstanding any other provision of this chapter, no employee or dependent of an employee shall be entitled to receive compensation for disability from an occupational disease, as defined by section 23-901, paragraph 13, subdivision (c), when such disability was caused either wholly or partly by the wilful misconduct, wilful self-exposure or disobedience to such reasonable rules and regulations adopted by the employer and which have been and are kept posted in conspicuous places in and about the premises of the employer, or otherwise brought to the attention of the employee.

B. As used in this section the term "wilful self-exposure" includes:

1. Failure or omission on the part of an employee or applicant for employment truthfully to state in writing to the best of his knowledge in answer to an inquiry made by the employer, the place, duration and nature of previous employment.

2. Failure or omission on the part of an applicant for employment truthfully to state in writing to the best of his knowledge in answer to an inquiry made by the employer, whether or not he had previously been a person with a disability, laid off or compensated in damages or otherwise because of any physical disability.

3. Failure or omission on the part of an employee or applicant for employment truthfully to give in writing to the best of his knowledge in answer to an inquiry made by the employer, full information about the previous status of his health, previous medical and hospital attention and direct and continuous exposure to active pulmonary tuberculosis.

23-901.05. Occupational disease aggravated by other disease or other disease aggravated by occupational disease; effect on compensation

Where an occupational disease, as defined by section 23-901, paragraph 13, subdivision (c), is aggravated by any other disease or infirmity not itself compensable, or where disability or death from any other cause not itself compensable is aggravated, prolonged, accelerated or in anywise contributed to by an occupational disease, the compensation payable under this chapter shall be reduced and limited to such proportion only of the compensation that would be payable if the occupational disease were the sole cause of the disability or death, as such occupational disease as a causative factor bears to all the causes of such disability or death.

23-901.06. Volunteer workers

In addition to persons defined as employees under section 23-901, volunteer workers of a county, city, town, or other political subdivision of the state may be deemed to be employees and entitled to the benefits provided by this chapter upon the passage of a resolution or ordinance by the political subdivision defining the nature and type of volunteer work and workers to be entitled to such benefits. The basis for computing compensation benefits and premium payments shall be four hundred dollars per month.

23-901.07. Persons with disabilities in vocational training; definition

A. Notwithstanding section 23-901, a qualified client of a nonprofit organization which provides vocational training to persons with disabilities is an employee of the nonprofit organization for the purposes of this chapter if the nonprofit organization elects to have the qualified client treated as an employee.

B. For the purposes of this section, "qualified client" means a person with a disability who is enrolled in a vocational training program with a nonprofit organization, who works as part of this program for the nonprofit organization or for another person under a contract with the nonprofit corporation and who receives compensation for the work from the nonprofit organization.

23-901.08. Professional employer organizations

A. A person engaged in the business of providing professional employer services is subject to this chapter regardless of whether the person uses the term professional employer

organization, PEO, staff leasing company, registered staff leasing company, employee leasing company or any other name.

B. As long as the professional employer organization's professional employer agreement with a client remains in force, the professional employer organization shall be regarded as a co-employer of the employee.

C. The professional employer organization and its client shall be considered the employer for the purpose of coverage under this chapter and both the professional employer organization and its client shall be entitled to protection of the exclusive remedy set forth in section 23-1022. Both the professional employer organization and its client shall comply with sections 23-906 and 23-964.

D. When a professional employer organization enters into a professional employer agreement with a client in this state, the professional employer organization shall notify its workers' compensation insurance carrier and the commission. The notification shall be on a form approved by the commission and shall include the following information:

1. The name and business address of the client employer.

2. Whether all or a majority of the client employer's workforce is covered by the professional employer agreement.

3. Unless all of the client employer's workforce is covered by the professional employer agreement, the name of the client employer's workers' compensation insurance carrier that is insuring the client employer's obligation to secure compensation under section 23-961 for any employees who are not covered by the professional employer agreement. The professional employer organization shall also notify each client, in writing, of the client's obligation under section 23-961 to secure workers' compensation for any employees who are not covered by the professional employer agreement, even if such employees are hired after the execution of the professional employer agreement.

E. If a professional employer agreement is terminated, the professional employer organization shall immediately notify its workers' compensation insurance carrier and the commission, in writing, of the name of the client and the date of termination of the agreement.

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 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.

23-903. Application of chapter to persons engaged in interstate commerce; limitation

The provisions of this chapter shall apply to employers and their employees engaged in intrastate and also in interstate and foreign commerce for whom a rule of liability or method of compensation has been or may be established by the United States only to the extent that their mutual connection with intrastate work is clearly separate and distinguishable from interstate or foreign commerce.

23-904. Arizona worker injuries in other state; injury to foreign worker in this state; evidence of insurance; judicial notice of other state's laws

A. If a worker who has been hired or is regularly employed in this state receives a personal injury by accident arising out of and in the course of the worker's employment, the worker is entitled to compensation according to the laws of this state even if the injury was received outside this state.

B. If a worker who is employed in this state and is subject to this chapter temporarily leaves this state incidental to that employment and receives an injury arising out of and in the course of employment, the worker, or beneficiaries of the worker if the injury results in death, is entitled to the benefits of this chapter as though the worker were injured in this state.

C. A worker from another state and the employer of the worker in that other state are exempt from this chapter while that worker is temporarily in this state doing work for an employer if all of the following are true:

1. The employer has furnished workers' compensation insurance coverage under the workers' compensation insurance or similar laws of a state other than Arizona so as to cover that worker's employment while in this state.

2. The extraterritorial provisions of this chapter are recognized in that other state.

3. Employers and workers who are covered in this state are likewise exempted from the application of the workers' compensation insurance act or similar laws of the other state.

4. The benefits under the workers' compensation insurance act or similar laws of the other state, or other remedies under a similar act or laws, are the exclusive remedy against the employer for any injury, whether resulting in death or not, received by the worker while temporarily working for that employer in this state.

D. A certificate from a duly authorized officer of the commission, the department of insurance or a similar department of another state certifying that the employer in the other state is insured in that state is prima facie evidence that the employer carries that workers' compensation insurance.

E. If in any appeal or other litigation the construction of the laws of another state is required, the courts shall take judicial notice of the laws of the other state.

F. For purposes of this section, a worker is deemed to be temporarily in a state doing work for an employer if, during the three hundred sixty-five days immediately preceding either the worker's date of injury or, in the case of an occupational disease or cumulative trauma claim, the worker's last date of injurious exposure, the worker performs fewer than ninety continuous days of required services in the state under the direction and control of the employer.

G. If a worker has a claim under the workers' compensation laws of another state, territory, province or foreign nation for the same injury or occupational disease as the claim filed in this state, the total amount of compensation paid or awarded under the other state's workers' compensation laws shall be credited against the compensation due under the workers' compensation laws of this state. The worker is entitled to the full amount of compensation due under the laws of this state. If compensation under the laws of this state is more than the compensation under the laws of the other state, or compensation paid the worker under the laws of the other state is recovered from the worker, the insurer shall pay any unpaid compensation to the worker up to the amount required by the claim under the laws of this state.

H. Claims made after the effective date of this section are subject to this section regardless of the date of injury.

23-905. Minor employees; limitation on payment of lump sum award; additional compensation

A. A minor working at an age and at an occupation legally permitted shall be deemed of the age of majority for the purposes of this chapter, and no other person shall have any claim or right to compensation for an injury to such minor employee, but an award of a lump sum of compensation to the minor employee shall be paid only to his legally appointed guardian.

B. An injured minor who is working at an age and at an occupation which is not legally permitted is entitled to additional compensation in an amount equal to fifty per cent of the compensation the injured minor would otherwise receive pursuant to this chapter. If an insurance carrier is required to pay additional compensation pursuant to this subsection, the

insurance carrier shall be subrogated and entitled to recover any such amounts paid from the employer.

23-906. Liability under chapter or under common law of employer securing compensation; carriers; service representatives; right of employee to make election; procedure for making election

A. Employers who comply with the provisions of section 23-961 or 23-962 as to securing compensation, and the employers' workers' compensation insurance carriers or administrative service representatives, shall not be liable for damages at common law or by statute, except as provided in this section, for injury or death of an employee wherever occurring, but it shall be optional with employees to accept compensation as provided by this chapter or to reject the provisions of this chapter and retain the right to sue the employer as provided by law.

B. The employee's election to reject the provisions of this chapter shall be made by a notice in writing, signed and dated by him and given to his employer, in duplicate in substantially the following form:

To (name of employer):

You are hereby notified that the undersigned elects to reject the terms, conditions and provisions of the law for the payment of compensation, as provided by the compulsory compensation law of the state of Arizona, and acts amendatory thereto.

C. The notice shall be filed with the employer prior to injuries sustained by the employee, and within five days the employer shall file with his insurance carrier the notice so served by the employee. All employees shall be conclusively presumed to have elected to take compensation in accordance with the terms, conditions and provisions of this chapter unless the notice in writing has been served by the employee upon his employer prior to injury.

D. Every employer engaged in the occupations designated in this chapter shall post and keep posted in a conspicuous place upon his premises, in English and Spanish and available for inspection by all workmen, a notice in substantially the following form:

All employees are hereby notified that in the event they do not specifically reject the provisions of the compulsory compensation law they are deemed by the laws of Arizona to have accepted the provisions of such law, and to have elected to accept compensation under the terms of such law, and that under the terms thereof employees have the right to reject the same by written notice thereof prior to any injury sustained, and that blanks and forms for such notice are available to all employees at the office of this company.

E. If an employer fails to post and keep posted the notice as required by this section, or fails to keep available at the place where the employees are hired the blank forms of notice to be signed by the employee, no employee who thereafter engages in employment for such employer, during the time that the notices are not posted or during the time that the blanks are not available, shall be deemed to have accepted the provisions of this chapter, and it shall be optional for such employee, if injured during the period when blanks were not available or the notice was not posted, to accept compensation under the provisions of this chapter or maintain other action against the employer.

23-907. Liability of employer failing to secure compensation; defenses; presumption; right of employee to compensation under chapter; information exchange; civil penalties; settlement of disputed claim

A. Employers who are subject to and who fail to comply with section 23-961 or 23-962 shall not be entitled to the benefits of this chapter during the period of noncompliance, but shall be liable in an action under any other applicable law of the state. In such action the defendant shall not avail himself of the defenses of assumption of risk or contributory negligence. In all such actions proof of the injury shall constitute prima facie evidence of negligence on the part of the employer and the burden shall be upon the employer to show freedom from negligence resulting in the injury.

B. An employee of such an employer, or the employee's dependents in case death ensued, in lieu of proceeding against the employer by civil action in court, may file an application with the commission for compensation in accordance with this chapter, and the commission shall hear and determine the application for compensation in the manner other claims are heard and determined before the commission. Except for a protest of compensability, an employer who protests or petitions the commission for relief of actions or determinations made by the special fund established by section 23-1065 shall be in compliance with section 23-961 or 23-962. The employer's protest or petition shall include proof that the employer is complying with section 23-961 or 23-962. The proof shall be either a copy of the declaration page of the workers' compensation insurance policy under section 23-961, subsection A, paragraph 1 or a notice to the commission that the employer is in good standing with the commission under section 23-961, subsection A, paragraph 2. The compensation so determined shall be paid from the special fund to the person entitled as provided in this section.

C. The special fund may begin the payment of medical or compensation benefits on a claim which involves an employer who has failed to secure compensation as required by section 23-961 and which is processed under subsection B of this section, pending finality of a notice, a determination, an order or a finding and award on a claim, condition or other matter accepted by the special fund. After payment begins, the payment shall not be interrupted if there is a protest, petition for hearing, request for review or appeal to a higher court by an employer unless, before a notice, determination or order is final, the special fund issues a notice, determination or order that rescinds or amends its prior action or terminates the payment of medical or compensation benefits. Any overpayment of medical or compensation benefits that occurs shall be credited or adjusted against any future liability on the same claim. Any overpayment of medical or compensation benefits to a claimant for a claim, condition or matter that is finally determined to be noncompensable shall be borne by the special fund.

D. The commission may spend monies from the special fund that relate to a claim under this section and shall include as part of an employer's liability under this section those expenditures for the employment or contracting of medical, rehabilitation or labor market

consultants, experts or examiners that are necessary for processing and determining benefits and assisting in determining the liability of the special fund on a claim.

E. The employer shall be notified of the employer's liability to the special fund periodically and this notice shall include a ten per cent penalty of the amount expended by the special fund or a penalty of one thousand dollars, whichever is greater, plus interest on the amount expended and the penalty pursuant to section 44-1201. The payments made from the special fund pursuant to the award plus the penalty shall act as a judgment against the employer. The commission shall file the award in the office of the clerk of the superior court in any county in the state and such award shall be entered in the civil order book and judgment docket and when so filed and entered shall be a lien for eight years from the date of the award upon the property of the employer located in the county. Execution may issue thereon within eight years in the same manner and with like effect as if the award were a judgment of the superior court. The commission may recover reasonable attorney fees incurred pursuant to this section. Any civil penalties and interest assessed pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund and any payments and attorney fees shall be deposited in the special fund account.

F. An employer with one or more employees who is required to comply with this chapter but who fails to obtain coverage through an insurance carrier or as a self-insurer shall be subject to an action by the commission to apply to the court for an injunction which shall cause the employer to cease the operation of business until such employer complies with the provisions of law pertaining thereto.

G. The commission and other state and local governmental agencies may exchange information concerning employers who fail to comply with section 23-961 or 23-962 with other federal, state or local governmental agencies. This exchange of information shall be made only for the purpose of the valid administrative needs of the programs administered by the commission or other agencies and shall not be made for the purpose of criminal prosecution of an employer.

H. The commission may assess a civil penalty of one thousand dollars on an uninsured employer if the commission makes an award for a noncompensable claim against the employer and finds that:

1. At the time of the accident for which the claim was made the employer was subject to this chapter.

2. The employer was not insured pursuant to this chapter.

I. The commission may issue an order assessing a civil penalty of not to exceed one thousand dollars on an employer who is subject to this chapter and who is not insured pursuant to this chapter. The order is final against the employer unless the employer requests a hearing before the commission within fifteen working days after a copy of the order is mailed to the employer. The employer's request for hearing shall specify the facts and grounds that are the basis of the employer's objection to the order issued under this subsection. Following the hearing the commission may affirm, reverse or modify its order and shall serve a copy of its decision by first class mail on the employer. An employer aggrieved by this decision may seek judicial review pursuant to title 12, chapter 7, article 6.

J. If the commission has assessed a civil penalty under this section against an employer within the previous five years for failure to secure workers' compensation as required under this chapter, the commission may assess an additional civil penalty against the employer that:

1. Does not exceed five thousand dollars for the second failure to secure the payment of compensation.

2. Does not exceed ten thousand dollars for a third or subsequent failure to secure the payment of compensation. As an aggravating factor only, the commission may consider the economic benefit that the employer received by failing to comply with this chapter.

K. In determining the amount of the final penalty under subsection H, I or J of this section, the commission may consider any relevant factor to waive or reduce the penalty, including:

1. The history of the employer's noncompliance with section 23-961 or 23-962.

2. The history of no insurance claims filed against the employer.

3. Whether the failure to secure workers' compensation coverage was inadvertent. For the purposes of this paragraph, "inadvertent" includes a lapse in coverage of not more than thirty days if there is a change of insurance carrier, a change of ownership or a change in the form of the business.

4. Whether the failure to secure workers' compensation coverage was because the employer was a victim of fraud, misrepresentation or gross negligence by an insurance agent or broker or by a person whom a reasonable person would believe is an insurance agent or broker.

L. Civil penalties assessed pursuant to subsections H, I and J of this section are payable to the state general fund and shall act as a judgment in the same manner as prescribed in subsection E of this section. Recovery of attorney fees and accrual of interest are the same as prescribed in subsection E of this section.

M. The commission may compromise or otherwise settle a disputed claim with an employee of an employer who is subject to and who fails to comply with section 23-961 or 23-962 by filing a notice of compromise and settlement or notice of stipulation with the presiding administrative law judge. The notice shall be served on the employer at the last known mailing address as shown on the records of the commission. The employer shall keep the commission informed of its current mailing address once the employer has been notified by the commission of the filing of a claim against the employer. If the employer does not request a hearing protesting the terms of the agreement or stipulation within ten working days of the service of the notice, the commission and the employee may execute the agreement or stipulation without the consent of the employer, subject to the approval of the presiding administrative law judge. Any payments made to the employee pursuant to this subsection shall be paid from the special fund and are subject to reimbursement and collection from the employer in the same manner as other payments made pursuant to this chapter.

23-908. Injury reports by employer and physician; schedule of fees; violation; classification

A. Every employer that is affected by this chapter, and every physician who attends an injured employee of such employer, shall file with the commission and the employer's insurance carrier from time to time a full and complete report of every known injury to the employee arising out of or in the course of employment and resulting in loss of life or injury. Such a report shall be furnished to the commission and the insurance carrier at times and in the form and detail the commission prescribes, and the report shall make special answers to all questions required by the commission under its rules.

B. The commission shall fix a schedule of fees to be charged by physicians, physical therapists or occupational therapists attending injured employees and, subject to subsection C of this section, for prescription medicines required to treat an injured employee under this chapter. The commission shall annually review the schedule of fees.

C. If a schedule of fees for prescription medicines adopted pursuant to subsection B of this section includes provisions regarding the use of generic equivalent drugs, those provisions shall comply with section 32-1963.01, subsections A and C through J. If the commission considers the adoption of fee schedule provisions that involve specific prices, values or reimbursements for prescription drugs, the commission shall base the adoption on studies or practices that are validated and accepted in the industry, including the applicability of formulas that use average wholesale price, plus a dispensing fee, and that have been made publicly available for at least one hundred eighty days before any hearing conducted by the commission.

D. Notwithstanding section 12-2235, information obtained by any physician or surgeon examining or treating an injured person shall not be considered a privileged communication, if that information is requested by interested parties for a proper understanding of the case and a determination of the rights involved. Hospital records of an employee concerning an industrial claim shall not be considered privileged if requested by an interested party in order to determine the rights involved. Medical information from any source pertaining to conditions unrelated to the pending industrial claim shall remain privileged.

E. When an accident occurs to an employee, the employee shall forthwith report the accident and the injury resulting therefrom to the employer, and any physician employed by the injured employee shall forthwith report the accident and the injury resulting therefrom to the employer, the insurance carrier and the commission.

F. When an accident occurs to an employee, the employer may designate in writing a physician chosen by the employer, who shall be permitted by the employee, or any person in charge of the employee, to make one examination of the injured employee in order to ascertain the character and extent of the injury occasioned by the accident. The physician so chosen shall forthwith report to the employer, the insurance carrier and the commission the character and extent of the injury as ascertained by him. If the accident is not reported by the employee or his physician forthwith, as required, or if the injured employee or those in charge of him refuse to permit the employer's physician to make the examination, and the injured employee is a party to the refusal, no compensation shall be paid for the injury claimed to have resulted from the accident. The commission may relieve the injured person or his dependents from the loss or forfeiture of compensation if it believes after investigation that the circumstances attending the failure on the part of the employee or his physician to report the accident and injury are such as to have excused them.

G. Within ten days after receiving notice of an accident, the employer shall inform the insurance carrier and the commission on such forms and in such manner as may be prescribed by the commission.

H. Immediately on notice to the employer of an accident resulting in an injury to an employee, the employer shall provide the employee with the name and address of the employer's insurance carrier, the policy number and the expiration date.

I. Any person failing or refusing to comply with this section is guilty of a petty offense.

23-909. Motion picture exemption

A. The provisions of this chapter shall not apply to employers and their employees engaged in any phase of the motion picture business that meet all of the following requirements:

1. The motion picture company engaging in such work is temporarily within the state for a period not to exceed eight months.

2. Such motion picture company is otherwise insured by a recognized insurance company where the premiums and benefits under such other insurance are at least equal to those provided in the workers' compensation laws in the state in which such company is incorporated, or if not incorporated, has its principal offices.

B. All Arizona residents employed by any company fulfilling the exemption requirements of this section shall execute a form rejecting the provisions of the compulsory compensation law of the state of Arizona and accepting the insurance coverage provided in this section. The form shall be in writing, signed and dated by the employee and given to his employer in duplicate in substantially the following form: "TO (name of employer): You are hereby notified that the undersigned elects to reject the terms, conditions and provisions of the law for the payment of compensation, as provided by the compulsory compensation law of the state of Arizona, and acts amendatory thereto. The undersigned elects to come under the policy of insurance in _____ insurance company secured by you and which carries similar premiums and benefits as provided under the compensation laws of the state of _____."

C. The provisions of section 23-906 shall apply to the insurance provided by the employer in this section, and shall be construed so that any reference to compulsory compensation of Arizona in such section is interpreted to include the insurance provided under this section. An election to come under the provisions of the insurance in this section shall not render the employer liable for damages of common law.

23-910. Exemption for licensees

The provisions of this chapter do not apply to a person who performs the services of a licensee as defined in section 32-2101 under the following conditions:

1. Substantially all of the remunerations whether or not paid in cash for services performed by an individual as a real estate licensee are directly related to sales or other output including the performance of services rather than the number of hours worked.

2. The services performed by the licensee are performed pursuant to a written contract between the licensee and the person for whom the services are performed and such contract provides that the licensee will not be treated as an employee with respect to such services for federal tax purposes and for the purposes of this chapter.

23-921. Administration of chapter

A. The industrial commission of Arizona is charged with the duties of the administration of this chapter, and with the adjudication of claims for compensation arising out of provisions of this chapter and any of its members or assistants so authorized may:

1. Hold hearings at any place within the state or without the state by agreement of the parties.

2. Administer oaths.

3. Issue and serve by the commission's representatives, or by any sheriff, subpoenas for the attendance of witnesses and claimants and the production of reports, papers, contracts, books, accounts, documents and testimony. The commission may require the attendance and testimony of employers, their officers and representatives before any proceeding of the commission, and the production by employees of books, records, papers and documents.

4. Generally provide for the taking of testimony and for the recording of proceedings held in accordance with this chapter.

B. The commission may make and declare all rules and regulations which are reasonably required in the performance of its duties, including but not limited to rules of practice and procedure in connection with hearing and review proceedings. Such rules and regulations may provide for informal prehearing conferences in order to expedite claim adjudication, amicably dispose of controversies, narrow issues and simplify the method of proof at hearings.

C. The commission may incur such expenses as it determines are reasonably necessary to perform its authorized functions, which expenses shall be a charge against the administrative fund.

D. The commission may charge any person with contempt who refuses to comply with any order of the commission, upon application to the superior court. Any person held in contempt may be punished by a fine of not to exceed one thousand dollars.

23-926. Inspection of employer records; noncompliance by employer; penalty

A. All books, records and payrolls of the employer, including nonconfidential employer records on file with other state or local governmental agencies, showing or reflecting in any way the wage expenditure of the employer shall always be open for inspection by the commission or its assistants to ascertain information necessary for its administration of the law.

B. An employer who refuses to submit his books, records and payrolls for inspection as provided by this section is liable for a penalty of five hundred dollars for each offense which shall be collected by a civil action in the name of the state, and the recovery shall be paid to the state general fund. The commission may recover reasonable attorney fees incurred pursuant to this section.

23-927. Power to enter places of employment

A commissioner may enter any place of employment to collect facts and statistics, and may bring to the attention of any employer any law or order of the commission and the failure of such employer to comply therewith. No employer shall refuse to admit a commissioner to his place of employment.

23-928. Investigation by agents

A. For the purpose of making an investigation with regard to any employment or place of employment, the commission may appoint, by an order in writing, a member of the commission or any other competent person who is a resident of the state, an agent whose duties shall be prescribed in the order.

B. In the discharge of his duties, the agent shall have the inquisitorial powers granted by this chapter to the commission and the same powers with regard to taking testimony as a referee or master appointed by a superior court. The recommendation made by such agent shall be advisory only and shall not preclude taking further evidence or making further investigations.

23-929. Enforcement of chapter

Upon request of the commission the attorney general, or under his direction the county attorney of the proper county, shall institute and prosecute the necessary actions or proceedings for the enforcement of the provisions of this chapter, or for any penalty provided for in this chapter, and shall prosecute or defend all actions or proceedings brought by or against the commission, or the members thereof in their official capacity. The commission may compromise any action.

23-930. Unfair claim processing practices; bad faith; civil penalties

A. The commission has exclusive jurisdiction as prescribed in this section over complaints involving alleged unfair claim processing practices or bad faith by an employer, self-insured employer, insurance carrier or claims processing representative relating to any aspect of this chapter. The commission shall investigate allegations of unfair claim processing or bad faith either on receiving a complaint or on its own motion.

B. If the commission finds that unfair claim processing or bad faith has occurred in the handling of a particular claim, it shall award the claimant, in addition to any benefits it finds are due and owing, a benefit penalty of twenty-five per cent of the benefit amount ordered to be paid or five hundred dollars, whichever is more.

C. If the commission finds that an employer, self-insured employer, insurance carrier or claim processing representative has a history or pattern of repeated unfair claim processing practices or bad faith, it may impose a civil penalty of up to one thousand dollars for each violation found. The civil penalty shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

D. Any party aggrieved by an order of the commission under this section may request a hearing pursuant to section 23-947. The hearing and decision shall be conducted pursuant to the provisions of section 23-941.

E. The commission shall adopt by rule a definition of unfair claim processing practices and bad faith. In adopting a rule under this subsection, the commission shall consider, among other factors, recognized and approved claim processing practices within the insurance industry, the commission's own experience in processing workers' compensation claims and the workers' compensation and insurance laws of this state.

F. This section shall not be construed as limiting or interfering with the authority of the department of insurance as provided by law to regulate any insurance carriers, including the jurisdiction of the department of insurance over unfair claim settlement practices as provided in section 20-461.

23-932. Violations; classification

A person who violates any provision of this chapter, commits any act therein prohibited, knowingly fails or refuses to perform any duty thereby imposed within the time prescribed by law or by the commission, or knowingly fails or refuses to obey an order of the commission or a judgment of a court made and entered under the provisions of this chapter, for which no penalty or punishment is otherwise specifically provided, is guilty of a class 6 felony.

23-933. Priority of judgment against assets of employer

Judgments obtained in any action prosecuted by the commission or by the state under the authority of this chapter shall have the same priority against the assets of the employer as claims for taxes.

23-941. Hearing rights and procedure

A. Subject to the provisions of section 23-947, any interested party may file a request for a hearing concerning a claim.

B. A request for a hearing shall be made in writing, signed by or on behalf of the interested party and including his address, stating that a hearing is desired, and filed with the commission.

C. The commission shall refer the request for the hearing to the administrative law judge division for determination as expeditiously as possible. The presiding administrative law judge may dismiss a request for hearing when it appears to his satisfaction that the disputed issue or issues have been resolved by the parties. Any interested party who objects to such dismissal may request a review pursuant to section 23-943.

D. At least twenty days' prior notice of the time and place of the hearing shall be given to all parties in interest by mail at their last known address. In the case of a hearing concerning suspension of benefits, pursuant to section 23-1026, 23-1027 or 23-1071, only ten days' prior notice need be given. Hearings shall be held in the county where the workman resided at the time of the injury or such other place selected by the administrative law judge.

E. A record of all proceedings at the hearing shall be made but need not be transcribed unless a party applies to the court of appeals for a writ of certiorari pursuant to section 23-951. The record of the proceedings if not transcribed, shall be kept for at least two years but may be destroyed after such time if a transcription is not requested.

F. Except as otherwise provided in this section and rules or procedure established by the commission, the administrative law judge is not bound by common law or statutory rules of evidence or by technical or formal rules of procedure and may conduct the hearing in any manner that will achieve substantial justice.

G. Any party shall be entitled to issuance and service of subpoenas under the provisions of section 23-921. Any party or his representative may serve such subpoenas.

H. Any interested party or his authorized agent shall be entitled to inspect any claims file of the commission, provided that such authorization is filed in writing with the commission.

I. Within thirty days after the date of notice of hearing any interested party to a hearing before the commission may file an affidavit for change of administrative law judge against any hearing officer of the commission hearing such matters or commencing to hear such matter, setting forth any of the grounds as provided in subsection J of this section, and the administrative law judge shall immediately transfer the matter to another officer of the commission who shall preside therein. Not more than one change of administrative law judge shall be granted to any one party.

J. Grounds which may be alleged as provided in subsection I of this section for change of administrative law judge are:

1. That the administrative law judge has been engaged as counsel in the hearing prior to appointment as administrative law judge.

2. That the administrative law judge is otherwise interested in the hearing.

3. That the administrative law judge is of kin or otherwise related to a party to the hearing.

4. That the administrative law judge is a material witness in the hearing.

5. That the party filing the affidavit has cause to believe and does believe that on account of the bias, prejudice, or interest of the administrative law judge he cannot obtain a fair and impartial hearing.

K. After final disposition of the proceedings in which they are used, exhibits marked for identification or introduced as evidence at hearings or proceedings which cannot be readily copied, photocopied, mechanically reproduced or otherwise preserved as a document for inclusion in the record of the proceedings may be disposed of in the following manner:

1. By written notice, the attorneys of record, or if none, the parties, shall be notified that the counsel or the party introducing such exhibit may claim it at the industrial commission within sixty days.

2. After sixty days following notification, any such exhibit remaining in the custody of the industrial commission shall be disposed of as state surplus property pursuant to the direction of the department of administration, surplus property division. A written description of any such exhibit shall be included in the record to preserve its identity.

23-941.01. Final settlement agreement; definition

A. Any final settlement agreement involving a workers' compensation claim is not valid and enforceable until the final settlement agreement is approved by the commission.

B. Subject to the following requirements, the parties may enter into a final settlement and release of a claim for undisputed entitlement to supportive medical maintenance benefits after the period of temporary disability is terminated by a final notice of claim status or award of the commission. The carrier or employer shall submit a summary of all reasonably anticipated future supportive medical maintenance benefits and the projected cost of the benefits for review by the employee. The summary shall also be included with the final settlement agreement filed with the commission. All medical conditions subject to the final settlement agreement must be described in the final settlement agreement. The final settlement provisions defined in this subsection shall only apply to future supportive medical maintenance benefits for the described condition.

C. The employer or carrier shall inform the attending physician of the approval of a final settlement agreement if the final settlement agreement terminates the employee's entitlement to supportive medical maintenance benefits. Unless supportive medical maintenance benefits rendered prior to the date of the final settlement are subject to a dispute or payment for the treatment was included in the final settlement agreement, the employer or carrier shall remain

responsible for payment for the treatment not covered by the final settlement agreement as provided by this chapter.

D. For the purposes of this section, "final settlement" means a settlement in which the injured worker waives any future entitlement to supportive medical maintenance benefits for known conditions described in the agreement.

23-942. Awards of administrative law judge; contents; disposition and effect

A. Upon the conclusion of any hearing, or prior thereto with concurrence of the parties, the administrative law judge shall promptly and not later than thirty days after the matter is submitted for decision determine the matter and make an award in accordance with his determination.

B. In the event of the demise, resignation, retirement, termination of employment, or other incapacitation of the presiding administrative law judge, the award shall be determined by the chief administrative law judge or his appointee.

C. The award shall become a part of the commission file. A copy of the award shall be sent forthwith by mail to all parties in interest.

D. The award is final when entered unless within thirty days after the date on which a copy of the award is mailed to the parties, one of the parties files a request for review under section 23-943. The award shall contain a statement explaining the rights of the parties under section 23-943.

23-943. Decision upon review

A. The request for review of an administrative law judge award need only state that the party requests a review of the award. The request may be accompanied by a memorandum of points and authorities, in which event any other interested party shall have fifteen days from the date of filing in which to respond. Failure to respond will not be deemed an admission against interest.

B. The request for review shall be filed with the administrative law judge division and copies of the request shall be mailed to all other parties to the proceeding.

C. When review has been requested, the record of such oral proceedings at the hearings before the administrative law judge for purposes of the review shall be transcribed at the expense of the commission.

D. Notice of the review shall be given to the parties by mail.

E. The review shall be made by the presiding administrative law judge and shall be based upon the record and the memoranda submitted under the provisions of subsection A of this section.

F. The presiding administrative law judge may affirm, reverse, rescind, modify or supplement the award and make such disposition of the case as is determined to be appropriate. A decision upon review shall be made within sixty days after the review has been requested, with preference being given to those cases not receiving compensation.

G. The decision upon review shall become a part of the commission file and a copy thereof sent by mail to the parties.

H. The decision upon review shall be final unless within thirty days after the date of mailing of copies of such decision to the parties, one of the parties applies to the court of appeals for a writ of certiorari pursuant to section 23-951. The decision shall contain a statement explaining the rights of the parties under this section and section 23-951.

23-944. Effective date of orders; time for compliance; effect of orders

A. General orders of the commission shall take effect within thirty days after publication. Special orders shall take effect as therein directed.

B. The commission shall, upon application of any employer, grant such time as reasonably necessary for compliance with an order. A person may petition the commission for an extension of time to comply with an order, which the commission shall grant if it finds the extension necessary.

C. All orders of the commission in conformity with law shall be valid and in force and prima facie reasonable and lawful until found otherwise in an action brought for that purpose pursuant to the provisions of this chapter or until altered or revoked by the commission.

D. A substantial compliance with the requirements of this chapter shall be sufficient to give effect to the orders of the commission, and they shall not be declared inoperative, illegal or void for an omission of a technical nature.

23-945. Petition for hearing on validity of order; procedure; substitution of order

A. Any employer or other person interested in or affected by an order of the commission may petition for a hearing on the reasonableness and lawfulness of such order by a verified petition filed with the commission. The petition shall set forth specifically and in detail the order upon which a hearing is desired, the reasons why the order is unreasonable or unlawful and the issue to be considered by the commission on the hearing. Objections other than those set forth in the petition are deemed finally waived.

B. Upon receipt of the petition, if the issue raised in the petition has theretofore been adequately considered, the commission shall confirm, without hearing, its previous determination. If a hearing is necessary to determine the issue raised, the commission shall order a hearing thereon at such time as it prescribes. Notice of the time and place of hearing

shall be given the petitioner and such other persons as the commission finds directly interested in the decision.

C. Upon the hearing, if it is found that the order complained of is unlawful or unreasonable, the commission shall substitute therefor a reasonable and lawful order, and may grant further time reasonably necessary for compliance with its order.

23-946. Action asserting invalidity of order; limitation; venue and procedure

A. Any person in interest dissatisfied with an order of the commission may within thirty days commence an action in the superior court of the county where the property, plant or place of employment affected by the order is located against the commission as defendant to set aside, vacate or amend the order, on the ground that the order is unreasonable or unlawful, and the superior court shall have exclusive jurisdiction thereof. The commission shall be served with summons as in civil actions.

B. The answer of the commission shall be filed within twenty days after service of summons upon it. The commission shall file with the answer a certified transcript of its record in the matter, whereupon the action shall be at issue and shall be advanced for trial by the court upon application of either party to the earliest possible date.

C. No action or proceeding to set aside, amend or enjoin enforcement of an order of the commission shall be brought unless the petitioner has applied to the commission for a hearing thereon as provided by section 23-945 and in such petition has raised every issue in the action.

23-946.01. Stay of court proceedings pending determination of issues by commission

A. If upon the trial provided for in section 23-946, it appears that all issues arising in the action have not theretofore been presented to the commission in the petition for a hearing as to the reasonableness and lawfulness of the order, or that the commission has not had ample opportunity to hear and determine the issues raised in the action, or has not in fact heard and determined the issues raised, the court shall before rendering judgment, unless the parties stipulate to the contrary, transmit to the commission a full statement of such issues not adequately considered, shall stay further proceedings in the action for fifteen days from the date of the transmission and may thereafter grant such further stay as is necessary.

B. Upon receipt of the statement from the court as provided in subsection A, the commission shall consider the issues not theretofore considered, and may alter, modify, amend or rescind its order complained of, and shall, within ten days from the receipt of the statement, report its order thereon to the court. The court shall thereupon order the pleading to be amended to raise the issues resulting from the alteration, modification, amendment or rescission of the commission's order, and thereafter proceed as in other civil actions.

23-947. Time within which hearing must be requested; definition

A. A hearing on any question relating to a claim shall not be granted unless the employee has previously filed an application for compensation within the time and in the manner prescribed by section 23-1061 and the request for a hearing is filed within ninety days after the notice sent under section 23-1061, subsection F or within ninety days of notice of a determination by the commission, insurance carrier or self-insuring employer under section 23-1047 or 23-1061, except that an employer who is subject to and fails to comply with section 23-961 or 23-962 must file a request for a hearing within thirty days of notice of a determination by the commission, or within ten days of all other awards issued by the commission.

B. As used in this section, "filed" means that the request for a hearing is in the possession of the commission. Failure to file with the commission within the required time by a party means that the determination by the commission, insurance carrier or self-insuring employer is final and res judicata to all parties. The industrial commission or any court shall not excuse a late filing unless any of the following applies:

1. The person to whom the notice is sent does not request a hearing because of justifiable reliance on a representation by the commission, employer or carrier. In this paragraph, "justifiable reliance" means that the person to whom the notice is sent has made reasonably diligent efforts to verify the representation, regardless of whether the representation is made pursuant to statutory or other legal authority.

2. At the time the notice is sent the person to whom it is sent is suffering from insanity or legal incompetence or incapacity, including minority.

3. The person to whom the notice is sent shows by clear and convincing evidence that the notice was not received.

C. The late filing shall not be excused under subsection B of this section if the person to whom the notice is sent or the person's legal counsel knew or, with the exercise of reasonable care and diligence, should have known of the fact of the notice at any time during the filing period.

23-948. Jurisdiction of actions concerning orders or petitions for writ of mandamus; right of appeal

No court of this state, except the superior court, the court of appeals and the supreme court on appeal shall have jurisdiction to review, vacate, set aside, reverse, revise, correct, amend or annul any order of the commission or to suspend or delay the execution or operation thereof, or to enjoin, restrain or interfere with the commission in the performance of its duties,

but a writ of mandamus may issue from the supreme court to the commission in proper cases, and an appeal may be taken from the superior court to the supreme court in all cases.

23-949. Effect of action concerning order; procedure to stay order

The pendency of an action to set aside, vacate or amend an order of the commission shall not stay or suspend the order of the commission. During pendency of the action, the superior court may stay or suspend, in whole or in part, operation of the commission's order only upon three days notice and after hearing, and the order of the court shall not become effective until a bond has been executed and filed in the action, approved by the court or the clerk thereof, payable to the state, in an amount sufficient to insure the prompt payment by the petitioning party of all damages caused by delay in the enforcement of the order of the commission.

23-950. Priority of actions

Actions and proceedings under this chapter and actions or proceedings to which the commission, the insurance department, or the state is a party in which any question arises under this chapter or concerning an award of the commission, or an order of the commission or insurance department shall be advanced for trial or hearing over civil actions, except election contests and actions affecting the corporation commission.

23-951. Writ of certiorari to review lawfulness of award, order or decision upon review; procedure

A. Any party affected by an award by the commission or by a decision upon review under the provisions of section 23-943 or by an order under the provisions of section 23-237 may apply to the court of appeals for a writ of certiorari to review the lawfulness of the award, order or decision upon review.

B. The writ of certiorari provided by subsection A of this section and by section 23-943 shall be made returnable within ten days and shall direct the commission to certify its record, proceedings and evidence to the court of appeals. The court of appeals may quash or dismiss the writ of certiorari upon the grounds of dismissal applicable to civil appeals. The review shall be limited to determining whether or not the commission acted without or in excess of its power and, if findings of fact were made, whether or not such findings of fact support the award, order or decision. If necessary, the court may review the evidence.

C. Each party to the proceedings before the commission may appear in the court of appeals.

D. The court of appeals shall enter judgment either affirming or setting aside the award, order or decision.

E. The rules of civil procedure relating to certiorari shall apply so far as applicable and not in conflict with this chapter.

23-952. Continuation of order or award pending hearing or appeal

When an order or award is issued by the industrial commission awarding permanent compensation benefits, compensation shall be paid as provided in such order or award and shall not be interrupted when there is a petition for hearing or appeal to a higher court. Any overpayment of permanent compensation resulting therefrom shall be credited against any future liability involving permanent compensation benefits in the same claim.

23-953. Notice of award; effect of petition for hearing or appeal; overpayment

When a notice is issued by an insurance carrier or a self-insured employer of an award for permanent compensation benefits pursuant to section 23-1044, subsection B, these benefits shall be paid as provided in the notice of award and shall not be interrupted if there is a petition for a hearing or an appeal to a higher court. Any resulting overpayment of these benefits shall be credited against any future liability for compensation benefits that may arise out of the same claim.

23-961. Methods of securing compensation by employers; deficit premium; civil penalty

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 are subject to the rules of the director of insurance.

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.

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.

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.

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 I of this section shall be deducted from the tax payable pursuant to this subsection.

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.

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 G of this section for premiums determined pursuant to subsection 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 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.

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

K. An insurer who fails to pay the tax prescribed by subsection G or 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.

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.

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 (name of sole proprietor). I am performing work as an independent contractor for (name of employer). I am not the employee of (name of employer) for workers' compensation purposes, and, therefore, I am not entitled to workers' compensation benefits from (name of employer). 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

23-961.01. Self-insurance pools

A. Two or more employers, each of whom are engaged in similar industries, may enter into contracts to establish a workers' compensation pool to provide for the payment and administration of workers' compensation claims pursuant to this chapter. The members of each workers' compensation pool shall elect a board of trustees to manage the workers' compensation pool established pursuant to this section. Each member employer shall have been in business for at least five consecutive years before entering into a contract to establish a workers' compensation pool. The total amount of gross workers' compensation insurance premiums paid by the members of the pool in the year preceding the execution of the contract must equal at least seven hundred fifty thousand dollars. The group of employers that makes up a workers' compensation pool shall have been formed for a specific purpose, other than to engage in self-insurance, before the formation of a workers' compensation pool. Employers may establish workers' compensation pools pursuant to this section by one of the following means:

1. On a cooperative or contract basis.
2. Through the joint formation of a nonprofit corporation.
3. By the execution of a trust agreement to carry out the provisions of this chapter directly by the employers or by contracting with a third party.

B. A workers' compensation pool established pursuant to this section is subject to approval as a self-insurer by the industrial commission pursuant to section 23-961, subsection A, paragraph 2. The commission shall adopt rules as necessary to carry out the purposes of this section.

C. Workers' compensation pools established pursuant to this section are exempt from taxation under title 43.

D. Each agreement or contract shall provide that the members of a workers' compensation pool are jointly and severally liable for the liabilities of the pool. If a member of

a pool discontinues its membership in the pool, that party shall be liable only for liabilities accruing prior to the discontinuation of its membership in the pool.

E. As to self-insurance pools established under this section, no pool, employer within a pool, or agent of any pool or employer within a pool may require an employee to be treated by or directed to any specific medical provider subsequent to the employee's initial visit to treat an industrial injury or illness, except as may be required as part of an independent medical examination for an employee making a workers' compensation claim.

F. The industrial commission shall adopt rules necessary for safeguarding the solvency of pools and guaranteeing that injured workers receive benefits as required under this chapter. These rules shall include, at a minimum, matters pertaining to classification and rating, loss reserves, investments, financial security including minimum and combined premiums, combined net worth and other indicia necessary for protection from insolvency, specific and aggregate excess insurance, group homogeneity and assessments necessary for participation in and administration of the workers' compensation system.

23-962. Insurance by governmental units; payment of premiums

A. Any county, city, town, municipal corporation or school district shall insure in any manner prescribed by the terms of section 23-961. Effective July 1, 1983, this state through the department of administration shall self-insure its liability, if any, under chapter 5 of this title and this chapter without the necessity of complying with section 23-961, subsection A, paragraph 2. On or before June 30, 1983, the state compensation fund and the department of administration shall enter into an interagency contract pursuant to title 11, chapter 7, article 3 for the return to this state of the reserves established and held by the state compensation fund for all claims against this state that were incurred on or before that date. These reserves shall be credited to the state general fund. The department of administration shall direct the continuing payment and processing of all claims against this state for injuries to state employees that were incurred both before and after July 1, 1983. All claims payments shall be made or reimbursed by the department on behalf of this state and for expenses incurred in connection with the payment and processing of such claims. The department of administration may procure excess loss coverage from an insurance carrier for individual or aggregate claims, or both, in such amounts and at such primary retention levels as the department of administration deems in the best interest of the state.

B. The clerk of the board of supervisors of each county, the clerk of each political subdivision and the superintendent of each school district that insures its workers' compensation liability with an insurance carrier shall furnish quarterly to the insurance carrier a true payroll showing the total amount paid to employees subject to the provisions of this chapter during each month of the quarter, segregated in accordance with the requirements of the insurance carrier.

C. Each clerk and school superintendent shall thereupon prepare and submit to his respective governing body for approval a claim for the amount of premiums due the insurance carrier. Such premiums shall be at once paid to the insurance carrier by the proper officer. The

department of administration shall draw a warrant for such premiums as are due until June 30, 1983 from the state in favor of the treasurer for the benefit of the insurance carrier and the treasurer shall at once pay the warrant from the general fund and the appropriation made therefor in the general appropriation bill for the insurance carrier.

23-963. Provisions of compensation insurance policy

Every policy of insurance covering the liability of the employer for workers' compensation shall cover the entire liability of the employer to his employees covered by the policy or contract, and be deemed to contain the following provisions:

1. That as between the employee and the insurance carrier the notice to or knowledge of the occurrence of the injury on the part of the employer shall be deemed notice or knowledge of the insurance carrier.

2. That jurisdiction of the employer shall be jurisdiction of the insurance carrier.

3. That the insurance carrier shall be bound by and subject to the orders, findings, decisions and awards rendered against the employer for payment of compensation.

4. That the insolvency or bankruptcy of the employer and his discharge therein shall not relieve the insurance carrier or workers' compensation pool from payment of compensation for injuries or death sustained by an employee during the life of the policy or contract.

23-963.01. Policies with deductible coverage

A. Notwithstanding the provisions of section 23-963, an insurance carrier authorized to transact workers' compensation insurance in this state may offer deductible coverage to employers. Deductible coverage shall be effected by attaching a benefits deductible endorsement to the policy. The endorsement shall specify whether loss adjustment expenses are to be treated as advancements within the deductible to be reimbursed by the employer. The policyholder exercising the deductible option shall choose only one deductible amount. Premium reductions for deductibles shall be determined before application of any experience modification, premium surcharge or premium discount. If an insurance carrier offers deductible coverage to an employer, the employer shall submit a certified copy of the employer's most recent financial statement to the insurance carrier to justify the deductible amount the employer chooses. The insurance carrier shall retain a copy of the financial statement for three years.

B. Any compensable claim for benefits shall be paid by the carrier. The employer shall reimburse the carrier for any deductible amounts paid by the carrier. The employer is liable for reimbursement up to the limit of the chosen deductible. The payment or nonpayment of

deductible amounts by the insured employer to the carrier shall be treated under the policy in the same manner as payment or nonpayment of premiums.

C. The nonpayment of deductible amounts by the insured employer to the carrier under subsection B of this section shall not relieve the insurance carrier from payment of compensation for injuries or death sustained by an employee during the period of time the agreement, contract or policy was in effect. No agreements, contracts or policies providing deductible amounts for workers' compensation coverage shall be terminated retroactively for nonpayment of deductible amounts.

D. Losses subject to the deductible shall be reported and recorded as losses for purposes of calculating rates for a policyholder on the same basis as losses under policies providing first dollar coverage.

23-964. Posting notice of compliance with compensation law

A. Each employer providing insurance or electing to pay compensation directly as provided in this chapter, shall post in conspicuous places about his place of business typewritten or printed notices stating that he has complied with the provisions of this chapter and all rules and regulations of the commission made in pursuance thereof and, if such is the fact, has been authorized by the commission directly to compensate his employees or their dependents.

B. The notices when posted shall constitute sufficient notice to the employees of the fact that the employer has complied with the law for securing compensation to his employees and their dependents.

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

A. If 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 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 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 employer.

23-967. Deduction of premium from employee wage or salary; violation; classification

Any employer who intentionally deducts any portion of the premium, except for accident benefits, which he is by law required to pay from the wage or salary of an employee is guilty of a class 6 felony.

23-968. Notification to employer by carrier

At the request of an employer the insurance carrier shall notify such employer of monies paid relating to a workman of the employer during the preceding month.

23-969. Satisfaction of lien; release

When any lien established by this article has been satisfied, the commission shall issue a release to the person against whom the lien is claimed. Such release shall be a document in a form as specified in section 11-480.

23-970. Misrepresentation of payroll, job description, job function or loss history affecting premium payment; violation; classification; penalty; statute of limitations; civil action

A. It is unlawful for an employer to wilfully misrepresent to an insurance carrier the amount of payroll, the job description or job function of an employee, or the employer's loss

history, on which the premium for workers' compensation insurance to be paid to the insurance carrier is based.

B. An employer that violates subsection A is guilty of a class 6 felony.

C. In addition to the punishment that may be imposed pursuant to subsection B, an employer that violates subsection A is liable for a penalty of up to three times the amount of the difference in premium paid and the amount the employer should have paid. The penalty shall be collected in a civil action by the insurance carrier, in addition to any other damages that are incurred by the insurance carrier due to the misrepresentation, including costs and attorney fees. The insurance carrier shall initiate the civil action within four years after the date the insurance carrier knew or with the exercise of reasonable diligence should have known of the misrepresentation. The insurance carrier may initiate the civil action regardless of whether a criminal action is brought against the employer.

23-1001. Delivery of insurance contract or policy to employer

Every employer insuring with an insurance carrier shall receive from such insurance carrier a contract or policy of insurance.

23-1021. Right of employee to compensation

Every employee coming within the provisions of this chapter who is injured, and the dependents of every such employee who is killed by accident arising out of and in the course of his employment, wherever the injury occurred, unless the injury was purposely self-inflicted, shall be entitled to receive and shall be paid such compensation for loss sustained on account of the injury or death, such medical, nurse and hospital services and medicines, and such amount of funeral expenses in the event of death, as are provided by this chapter.

23-1021.01. Peace officers; fire fighters; employment status

A. A peace officer or fire fighter as defined in section 1-215 who is injured or killed while traveling directly to or from work as a peace officer shall be considered in the course and scope of employment solely for the purposes of eligibility for workers' compensation benefits, provided that the peace officer or fire fighter is not engaged in criminal activity.

B. Nothing in this section shall create any liability on the part of the peace officer's or fire fighter's employer for any civil damages occurring through the peace officer's or fire fighter's negligent or intentional conduct while traveling to or from work as a peace officer.

23-1022. Compensation as exclusive remedy for employees; definition; exceptions; public agency employees

A. The right to recover compensation pursuant to this chapter for injuries sustained by an employee or for the death of an employee is the exclusive remedy against the employer or any co-employee acting in the scope of his employment, and against the employer's workers' compensation insurance carrier or administrative service representative, except as provided by section 23-906, and except that if the injury is caused by the employer's wilful misconduct, or in the case of a co-employee by the co-employee's wilful misconduct, and the act causing the injury is the personal act of the employer, or in the case of a co-employee the personal act of the co-employee, or if the employer is a partnership, on the part of a partner, or if a corporation, on the part of an elective officer of the corporation, and the act indicates a wilful disregard of the life, limb or bodily safety of employees, the injured employee may either claim compensation or maintain an action at law for damages against the person or entity alleged to have engaged in the wilful misconduct.

B. "Wilful misconduct" as used in this section means an act done knowingly and purposely with the direct object of injuring another.

C. This section does not apply to an action for medical malpractice against any employee of a hospital maintained by the employer pursuant to section 23-1070. Any suit allowed by this subsection is subject to the lien rights provided by section 23-1023.

D. An employee of a public agency, as defined in section 11-951, who works under the jurisdiction or control of or within the jurisdictional boundaries of another public agency pursuant to a specific intergovernmental agreement or contract entered into between the public agencies as provided in section 11-952 is deemed to be an employee of both public agencies for the purposes of this section. The primary employer shall be solely liable for the payment of workers' compensation benefits for the purposes of this section.

E. Every public agency as defined in section 11-951 for which an intergovernmental agreement or contract is in effect shall post a notice pursuant to the provisions of section 23-906, in substantially the following form:

"All employees are hereby further notified that they may be required to work under the jurisdiction or control of or within the jurisdictional boundaries of another public agency pursuant to an intergovernmental agreement or contract, and under such circumstances they are deemed by the laws of Arizona to be employees of both public agencies for the purposes of workers' compensation."

23-1023. Liability of third person to injured employee; election of remedies

A. If an employee who is entitled to compensation under this chapter is injured or killed or further aggravates a previously accepted industrial injury by the negligence or wrong of

another person not in the same employ, the injured employee, or in event of death the injured employee's dependents, may pursue the injured person's remedy against the other person.

B. If the employee who is entitled to compensation under this chapter or the employee's dependents do not pursue a remedy pursuant to this section against the other person by instituting an action within one year after the cause of action accrues, or if after instituting the action, the employee or the employee's dependents fail to fully prosecute the claim and the action is dismissed, the claim against the other person is deemed assigned to the insurance carrier or self-insured employer and all of the following apply:

1. The insurance carrier or self-insured employer may institute an action against the other person.

2. Any dismissal that is entered for lack of prosecution of an action instituted by the employee or the employee's dependents shall not prejudice the right of the insurance carrier or self-insured employer to recover the amount of benefits paid.

3. If the statute of limitations of the claim is one year after the cause of action accrues, the insurance carrier or self-insured employer may file the action prior to one year after the cause of action accrues.

4. The claim may be prosecuted or compromised by the insurance carrier or the person liable for the self-insured employer or may be reassigned in its entirety to the employee or the employee's dependents. After the reassignment, the employee who is entitled to compensation, or the employee's dependents, shall have the same rights to pursue the claim as if it had been filed within the first year.

C. The employee or the employee's dependents shall provide the insurance carrier or the self-insured employer written notice of the intention to bring an action against a third party and shall provide to the insurance carrier or self-insured employer timely and periodic notice of all pleadings and rulings concerning the status of the pending action. In any action instituted by the employee or the employee's dependents, the insurance carrier or the self-insured employer shall have the right to intervene at any time to protect the insurance carrier's or the self-insured employer's interests.

D. If the employee proceeds against the other person, compensation and medical, surgical and hospital benefits shall be paid as provided in this chapter and the insurance carrier or other person liable to pay the claim shall have a lien on the amount actually collectable from the other person to the extent of such compensation and medical, surgical and hospital benefits paid. This lien shall not be subject to a collection fee. The amount actually collectable shall be the total recovery less the reasonable and necessary expenses, including attorney fees, actually expended in securing the recovery. In any action arising out of an aggravation of a previously accepted industrial injury, the lien shall only apply to amounts expended for compensation and treatment of the aggravation. The insurance carrier or person shall contribute only the deficiency between the amount actually collected and the compensation and medical, surgical and hospital benefits provided or estimated by this chapter for the case. Compromise of any claim by the employee or the employee's dependents at an amount less than the compensation and medical, surgical and hospital benefits provided for shall be made only with written approval of the insurance carrier or self-insured employer liable to pay the claim.

E. For purposes of this section, the commission shall have the same rights as an insurance carrier or self-insured employer.

23-1024. Choice of remedy as waiver of alternate remedy

A. An employee, or his legal representative in event death results, who accepts compensation waives the right to exercise any option to institute proceedings in court against his employer or any co-employee acting within the scope of his employment, or against the employer's workers' compensation insurance carrier or administrative service representative.

B. An employee, or his legal representative in event death results, who exercises any option to institute a proceeding in court against his employer waives any right to compensation.

23-1025. Agreement by employee to waive compensation or to pay premium void; unlawful collection of premium; classification

A. An agreement by an employee to waive the employee's rights to compensation, except as provided in this chapter, or an agreement by an employee to pay any portion of the premium paid by the employee's employer is void.

B. It is unlawful for an employer to intentionally collect or receive any premiums from an employee for workers' compensation insurance, except as provided in this chapter. A violation of this subsection is a class 6 felony.

23-1026. Periodic medical examination of employee; effect of refusal or obstruction of examination or treatment

A. An employee who may be entitled to compensation under this chapter shall submit himself for medical examination from time to time at a place reasonably convenient for the employee, if and when requested by the commission, his employer or the insurance carrier. A place is reasonably convenient even if it is not where the employee resides if it is the place where the employee was injured and the employer or the insurance carrier pays in advance the employee's reasonable travel expenses, including the cost of transportation, food, lodging and loss of pay, if applicable.

B. The request for the medical examination shall fix a time and place having regard to the convenience of the employee, his physical condition and his ability to attend. The employee may have a physician present at the examination if procured and paid for by the employee.

C. If the employee refuses to submit to the medical examination or obstructs the examination, his right to compensation shall be suspended until the examination has been made, and no compensation shall be payable during or for such period.

D. A physician who makes or is present at the medical examination provided by this section may be required to testify as to the result of the examination. The physician is not subject to a complaint for unprofessional conduct to the physician's licensing board if the complaint is based on a disagreement with the findings and opinions expressed by the physician as a result of the examination.

E. On appropriate application and hearing, the commission may reduce or suspend the compensation of an employee who persists in unsanitary or injurious practices tending to imperil or retard his recovery, or who refuses to submit to medical or surgical treatment reasonably necessary to promote his recovery.

F. An employee shall be excused from attending a scheduled medical examination if the employee requests a protective order and the administrative law judge finds that the scheduled examination is unnecessary, would be cumulative or could reasonably be timely scheduled with an appropriate physician where the employee resides. If a protective order is requested the burden is on the employer or insurance carrier to establish that a medical examination should be scheduled at a place other than where the employee resides. If an employee has left this state and the employer or insurance carrier pays in advance the employee's reasonable travel expenses, including the cost of transportation, food, lodging and loss of pay, if applicable, the employer or insurance carrier is entitled to have the employee return to this state one time a year for examination or one time following the filing of a petition to reopen.

G. If a physician performs an examination under this section and is provided data from the Arizona state board of pharmacy pursuant to title 36, chapter 28, the physician may disclose that data to the employee, employer, insurance carrier and commission.

23-1027. Compensation precluded by neglect or refusal of employee to submit to treatment

No compensation shall be payable for the death or disability of an employee if his death is caused by, or insofar as his disability may be aggravated, caused or continued by an unreasonable refusal or neglect to submit to or follow any competent or reasonable surgical treatment or medical aid.

23-1028. False statements or representations to obtain compensation; forfeiture; violation; classification; sworn statement; definition

A. If in order to obtain any compensation, benefit or payment under this chapter, either for himself or for another, any person knowingly makes a false statement or representation,

the person is guilty of a class 6 felony, and, if the person is a claimant for compensation, the claimant shall also forfeit all right to any future temporary or permanent disability compensation for the claim on which the false statement or representation was made after conviction of the offense. Forfeiture pursuant to this section does not terminate on any subsequent designation of the offense as a misdemeanor.

B. Notwithstanding section 13-801, a sentence to pay a fine for a violation of this section by a claimant or co-employee shall be a sentence to pay an amount fixed by the court of not more than fifty thousand dollars.

C. Any person who commits a violation under this section is also subject to the penalties prescribed in sections 20-466.02 and 20-466.04.

D. A claimant for compensation shall personally sign any monthly or annual income status report that requests the claimant to report employment status or earnings to the insurance carrier or self-insured employer, including the annual report of earnings pursuant to section 23-1047. The reporting document shall contain the following statement:

> Any person who knowingly makes a false statement or representation to obtain any compensation, benefit or payment is guilty of a class 6 felony and is subject to up to one and one-half years in prison, a fifty thousand dollar fine and forfeiture of benefits. By my signature below, I am applying for all benefits to which I may be entitled and I swear that the statements made on this application are true, correct and complete to the best of my knowledge.

E. For the purposes of this section, "statement" includes any notice, proof of injury, bill for services, payment for services, hospital or doctor records, x-rays, test reports, medical or legal expenses, or other evidence of loss or injury, or other expense or payment.

23-1029. Repeal of chapter; effect on rights of parties

If the provisions of this chapter relative to compensation for injuries to or death of workmen are repealed, and the injury or death has not previously been compensated by lump payment or completed monthly payments, the period intervening between the injury or death and the repeal shall not be computed as a part of the time limited by law for the commencement of any action relating to such injury or death. The action shall be commenced within one year after the repeal and any amount paid as compensation shall be deducted from the right of recovery.

23-1030. Effect on employers' liability law

This chapter shall not be construed as having repealed the sections of the statutes commonly known as the employers' liability law.

23-1031. Persons incarcerated; suspension of benefits

A. Except as provided in subsection B of this section, beginning on December 1, 1997, payment of compensation under this chapter shall be suspended during the period of time that the employee has either:

1. Been convicted of a crime and is incarcerated in any state, federal, county or city jail or correctional facility.

2. Been adjudicated delinquent and is incarcerated in any state, federal, county or city jail or correctional facility.

B. If any portion of an employee's payment of compensation under this chapter has been garnished to satisfy support obligations pursuant to title 25, chapter 5, article 1, the portion of the compensation that has been garnished shall be paid as provided in the court order.

23-1041. Basis for computing compensation; definition

A. Every employee of an employer within the provisions of this chapter who is injured by accident arising out of and in the course of employment, or the employee's dependents in the event of the employee's death, shall receive the compensation fixed in this chapter on the basis of the employee's average monthly wage at the time of injury.

B. If the injured or killed employee has not been continuously employed for the period of thirty days immediately preceding the injury or death, the average monthly wage shall be such amount as, having regard to the previous wage of the injured employee or of other employees of the same or most similar class working in the same or most similar employment in the same or neighboring locality, reasonably represents the monthly earning capacity of the injured employee in the employment in which the injured employee is working at the time of the accident.

C. If the employee is working under a contract by which the employee is guaranteed an amount per diem or per month, notwithstanding the contract price for such labor, the employee or the employee's subordinates or employees working under the terms of such contract or the employee's or their dependents in case of death shall be entitled to receive compensation on the basis only of the guaranteed wage as set out in the contract of employment, whether paid on a per diem or monthly basis, but in no event shall the basis be less than the wages paid to employees for similar work not under contract.

D. Notwithstanding any other provision of this chapter, in computing the average monthly wage there shall be excluded from such computation all wages or other compensation for services in excess of:

1. One thousand three hundred twenty-five dollars per month for employees injured before January 1, 1988.

2. One thousand six hundred fifty dollars per month for employees injured from and after December 31, 1987 but before July 1, 1989.

3. One thousand eight hundred dollars per month for employees injured from and after June 30, 1989 but before July 1, 1991.

4. Two thousand one hundred dollars per month for employees injured from and after June 30, 1991 but before August 6, 1999.

5. Two thousand four hundred dollars per month for employees injured on or after August 6, 1999 but before January 1, 2008.

6. Three thousand dollars per month for employees injured from and after December 31, 2007 but before January 1, 2009.

7. Three thousand six hundred dollars per month for employees injured from and after December 31, 2008 but before January 1, 2010.

8. The amount adopted by the commission under subsection E for employees injured on or after January 1, 2010.

E. For purposes of subsection D, paragraph 8, the commission, not later than August 1 of each calendar year, beginning August 1, 2009, shall adopt an amount that adjusts the amount from the prior year to reflect the annual percentage increase in the bureau of labor statistics employment cost index for the prior calendar year. The amount adopted by the commission shall be effective for the following calendar year and shall apply to all injuries occurring during that calendar year. In adopting the amount under this subsection, the commission shall not decrease the amount from the prior year or increase the amount more than five per cent from the prior year.

F. Prior to a determination of the average monthly wage, compensation shall be paid on a basis of a minimum monthly wage of two hundred dollars for employees eighteen years of age or over.

G. For the purposes of this section, "monthly wage" means the average wage paid during and over the month in which the employee is killed or injured.

23-1042. Basis for computing average monthly wage of minor permanently incapacitated

If it is established by competent evidence that an injured employee is under eighteen years of age and his incapacity is permanent, his average monthly earning capacity shall be deemed, within the limits fixed by sections 23-1041 and 23-1046, to be the monthly amount which under ordinary circumstances he would probably be able to earn at the age of eighteen years in the occupation in which he was employed at the time of injury, or in any occupation to which he would reasonably have been promoted if he had not been injured. If the probable earnings at the age of eighteen years cannot be reasonably determined, his average earnings shall be based upon four dollars per day for a six-day week.

23-1043. Hernias classified for compensation purposes

All hernias are considered injuries within the provisions of this chapter causing incapacitating conditions or permanent disability, and until otherwise ordered by the commission, the following rules for rating hernias shall govern:

1. Real traumatic hernia is an injury to the abdominal wall of sufficient severity to puncture or tear asunder the wall, and permit the exposure or protrusion of the abdominal viscera or some part thereof. Such injury will be compensated as a temporary total disability and as a partial permanent disability, depending upon the lessening of the injured individual's earning capacity.

2. All other hernias, whenever occurring or discovered and whatsoever the cause, except as under paragraph 1 of this section, are considered diseases causing incapacitating conditions or permanent partial disability, but the permanent partial disability and the causes thereof are considered to be as shown by medical facts to have either existed from birth, to have been years in formation, or both, and are not compensatory, unless it is proved:

(a) That the immediate cause, which calls attention to the presence of the hernia, was a sudden effort or severe strain or blow received while in the course of employment.

(b) That the descent of the hernia occurred immediately following the cause.

(c) That the cause was accompanied or immediately followed by severe pain in the hernial region.

(d) That the facts in subdivisions (a), (b) and (c) of this paragraph were of such severity that they were noticed by the claimant and communicated immediately to one or more persons.

If the facts in subdivisions (a), (b), (c) and (d) of this paragraph are proven, the hernias are considered to be aggravations of previous ailments or diseases, and will be compensated as such for time lost only to a limited extent, depending upon the nature of the proof submitted and the result of the local medical examination, but for not to exceed two months. Hernias of every kind shall be compensated pursuant to this paragraph unless the claimant proves to the satisfaction of the commission by a preponderance of the evidence that the hernia is a real traumatic hernia as defined in paragraph 1.

23-1043.01. Heart-related and mental cases

A. A heart-related or perivascular injury, illness or death shall not be considered a personal injury by accident arising out of and in the course of employment and is not compensable pursuant to this chapter unless some injury, stress or exertion related to the employment was a substantial contributing cause of the heart-related or perivascular injury, illness or death.

B. A mental injury, illness or condition shall not be considered a personal injury by accident arising out of and in the course of employment and is not compensable pursuant to this chapter unless some unexpected, unusual or extraordinary stress related to the

employment or some physical injury related to the employment was a substantial contributing cause of the mental injury, illness or condition.

C. If compensation is payable for a heart-related or perivascular injury, illness or death, or for a mental injury, illness or condition, the only employer liable is the employee's last employer in whose employment the requirements of subsection A or B are met.

23-1043.02. Human immunodeficiency virus; establishing exposure; definition

A. A claim for a condition, infection, disease or disability involving or related to the human immunodeficiency virus or acquired immune deficiency syndrome shall include the occurrence of a significant exposure as defined in this section and, except as provided in subsection B of this section, shall be processed and determined under the provisions of this chapter and applicable principles of law.

B. Notwithstanding any other law, an employee who satisfies the following conditions presents a prima facie claim for a condition, infection, disease or disability involving or related to the human immunodeficiency virus or acquired immune deficiency syndrome if the medical evidence shows to a reasonable degree of medical probability that the employee sustained a significant exposure within the meaning of this section:

1. The employee's regular course of employment involves handling or exposure to blood or body fluids, other than tears, saliva or perspiration, including health care providers as defined in title 36, chapter 6, article 4, forensic laboratory workers, fire fighters, law enforcement officers, emergency medical technicians, paramedics and correctional officers.

2. Within ten calendar days after a possible significant exposure which arises out of and in the course of his employment, the employee reports in writing to the employer the details of the exposure. The employer shall notify its insurance carrier or claims processor of the report. Failure of the employer to notify the insurance carrier is not a defense to a claim by the employee.

3. The employee has blood drawn within ten days after the possible significant exposure, the blood is tested for the human immunodeficiency virus by antibody testing within thirty days after the exposure and the test results are negative.

4. The employee is tested or diagnosed, according to clinical standards established by the centers for disease control of the United States public health service, as positive for the presence of the human immunodeficiency virus within eighteen months after the date of the possible significant exposure.

C. On presentation or showing of a prima facie claim under this section, the employer may produce specific, relevant and probative evidence to dispute the underlying facts, to contest whether the exposure was significant as defined in this section, or to establish an alternative significant exposure involving the presence of the human immunodeficiency virus.

D. A person alleged to be a source of a significant exposure shall not be compelled by subpoena or other court order to release confidential human immunodeficiency virus related information either by document or by oral testimony. Evidence of the alleged source's human

immunodeficiency virus status may be introduced by either party if the alleged source knowingly and willingly consents to the release of that information.

E. Notwithstanding title 36, chapter 6, article 4, medical information regarding the employee obtained by a physician or surgeon is subject to the provisions of section 23-908, subsection D.

F. The commission by rule shall prescribe requirements and forms regarding employee notification of the requirements of this section and the proper documentation of a significant exposure.

G. For the purposes of this section, "significant exposure" means contact of an employee's ruptured or broken skin or mucous membrane with a person's blood or body fluids, other than tears, saliva or perspiration, of a magnitude that the centers for disease control have epidemiologically demonstrated can result in transmission of the human immunodeficiency virus. For purposes of filing a claim under this section, significant exposure does not include sexual activity or illegal drug use.

23-1043.03. Hepatitis C; establishing exposure; definition

A. A claim for a condition, infection, disease or disability involving or related to hepatitis C shall include the occurrence of a significant exposure as defined in this section and, except as provided in subsection B of this section, shall be processed and determined under this chapter and applicable principles of law.

B. Notwithstanding any other law, an employee who satisfies the following conditions presents a prima facie claim for a condition, infection, disease or disability involving or related to hepatitis C if the medical evidence shows to a reasonable degree of medical probability that the employee sustained a significant exposure within the meaning of this section:

1. The employee's regular course of employment involves handling of or exposure to blood or body fluids, other than tears, saliva or perspiration, including health care providers as defined in section 36-661, forensic laboratory workers, fire fighters, law enforcement officers, emergency medical technicians, paramedics and correctional officers.

2. Within ten calendar days after a possible significant exposure that arises out of and in the course of his employment, the employee reports in writing to the employer the details of the exposure. The employer shall notify its insurance carrier or claims processor of the report. Failure of the employer to notify the insurance carrier is not a defense to a claim by the employee.

3. The employee has blood drawn within ten days after the possible significant exposure, the blood is tested for hepatitis C by antibody testing within thirty days after the exposure and the test results are negative.

4. The employee is tested or diagnosed, according to clinical standards established by the centers for disease control of the United States public health service, as positive for the presence of hepatitis C within seven months after the date of the possible significant exposure.

C. On presentation or showing of a prima facie claim under this section, the employer may produce specific, relevant and probative evidence to dispute the underlying facts, to

contest whether the exposure was significant as defined in this section, or to establish an alternative significant exposure involving the presence of hepatitis C.

D. A person alleged to be a source of a significant exposure shall not be compelled by subpoena or other court order to release confidential hepatitis C related information either by document or by oral testimony. Evidence of the alleged source's hepatitis C status may be introduced by either party if the alleged source knowingly and willingly consents to the release of that information.

E. Notwithstanding title 36, chapter 6, article 4, medical information regarding the employee obtained by a physician or surgeon is subject to section 23-908, subsection D.

F. The commission by rule shall prescribe requirements and forms regarding employee notification of the requirements of this section and the proper documentation of a significant exposure.

G. For the purposes of this section, "significant exposure" means contact of an employee's ruptured or broken skin or mucous membrane or other significant unbroken surface area with a person's blood or body fluids, other than tears, saliva or perspiration, of a magnitude that the centers for disease control have epidemiologically demonstrated can result in transmission of hepatitis C. For purposes of filing a claim under this section, significant exposure does not include sexual activity or illegal drug use.

23-1043.04. Methicillin-resistant staphylococcus aureus; spinal meningitis; tuberculosis; establishing exposure; definitions

A. A claim for a condition, infection, disease or disability involving or related to methicillin-resistant staphylococcus aureus, spinal meningitis or tuberculosis shall include the occurrence of a significant exposure as defined in this section and, except as provided in subsection B of this section, shall be processed and determined under this chapter and applicable principles of law.

B. Notwithstanding any other law, an employee who satisfies the following criteria presents a prima facie claim for a condition, infection, disease or disability involving or related to methicillin-resistant staphylococcus aureus, spinal meningitis or tuberculosis if the medical evidence shows to a reasonable degree of medical probability that the employee sustained a significant exposure within the meaning of this section:

1. The employee's regular course of employment involves handling of or exposure to methicillin-resistant staphylococcus aureus, spinal meningitis or tuberculosis.

2. Within thirty calendar days after a possible significant exposure that arises out of and in the course of employment, the employee reports in writing to the employer the details of the exposure. The employer shall notify its insurance carrier or claims processor of the report. Failure of the employer to notify the insurance carrier is not a defense to a claim by the employee.

3. For a claim involving methicillin-resistant staphylococcus aureus, the employee must be diagnosed with methicillin-resistant staphylococcus aureus within fifteen days after the employee reports pursuant to paragraph 2 of this subsection.

4. For a claim involving spinal meningitis, the employee is diagnosed with spinal meningitis within two to eighteen days of the possible significant exposure.

5. For a claim involving tuberculosis, the employee is diagnosed with tuberculosis within twelve weeks of the possible significant exposure.

C. On presentation or showing of a prima facie claim under this section, the employer may produce specific, relevant and probative evidence to dispute the underlying facts, to contest whether the exposure was significant as defined in this section or to establish an alternative significant exposure involving the presence of methicillin-resistant staphylococcus aureus, spinal meningitis or tuberculosis.

D. A person alleged to be a source of a significant exposure shall not be compelled by subpoena or other court order to release confidential information relating to methicillin-resistant staphylococcus aureus, spinal meningitis or tuberculosis either by document or by oral testimony. Evidence of the alleged source's methicillin-resistant staphylococcus aureus, spinal meningitis or tuberculosis status may be introduced by either party if the alleged source knowingly and willingly consents to the release of that information.

E. Notwithstanding title 36, chapter 6, article 4, medical information regarding the employee obtained by a physician or surgeon is subject to section 23-908, subsection D.

F. The commission by rule shall prescribe requirements and forms regarding employee notification of the requirements of this section and the proper documentation of a significant exposure.

G. Notwithstanding any other law, expenses for postexposure evaluation and follow-up, including reasonably required prophylactic treatment, for spinal meningitis or tuberculosis, shall be a medical benefit under section 23-1061 or 23-1062 for any significant exposure that arises out of and in the course of employment if the employee files a claim under this article for the significant exposure or the employee reports in writing to the employer the details of the exposure. Providing postexposure evaluation and follow-up, including prophylactic treatment, does not constitute acceptance of a claim for a condition, infection, disease or disability involving or related to the significant exposure.

H. For the purposes of this section:

1. "Employee" means firefighters, law enforcement officers, corrections officers, probation officers, emergency medical technicians and paramedics who are not employed by a health care institution as defined in section 36-401.

2. "Significant exposure" means exposure in the course of employment to aerosolized bacteria for claims under this section relating to methicillin-resistant staphylococcus aureus, spinal meningitis or tuberculosis. Significant exposure includes exposure in the course of employment to bodily fluids or skin for claims under this section relating to methicillin-resistant staphylococcus aureus.

23-1044. Compensation for partial disability; computation

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

B. Disability shall be deemed permanent partial disability if caused by any of the following specified injuries, and compensation of fifty-five per cent of the average monthly wage of the injured employee, in addition to the compensation for temporary total disability, shall be paid for the period given in the following schedule:

1. For the loss of a thumb, fifteen months.
2. For the loss of a first finger, commonly called the index finger, nine months.
3. For the loss of a second finger, seven months.
4. For the loss of a third finger, five months.
5. For the loss of the fourth finger, commonly called the little finger, four months.
6. The loss of a distal or second phalange of the thumb or the distal or third phalange of the first, second, third or fourth finger, shall be considered equal to the loss of one-half of the thumb or finger, and compensation shall be one-half of the amount specified for the loss of the entire thumb or finger.
7. The loss of more than one phalange of the thumb or finger shall be considered as the loss of the entire finger or thumb, but in no event shall the amount received for more than one finger exceed the amount provided for the loss of a hand.
8. For the loss of a great toe, seven months.
9. For the loss of a toe other than the great toe, two and one-half months.
10. The loss of the first phalange of any toe shall be considered equal to the loss of one-half of the toe and compensation shall be one-half of the amount for one toe.
11. The loss of more than one phalange shall be considered as the loss of the entire toe.
12. For the loss of a major hand, fifty months, or of a minor hand, forty months.
13. For the loss of a major arm, sixty months, or of a minor arm, fifty months.
14. For the loss of a foot, forty months.
15. For the loss of a leg, fifty months.
16. For the loss of an eye by enucleation, thirty months.
17. For the permanent and complete loss of sight in one eye without enucleation, twenty-five months.
18. For permanent and complete loss of hearing in one ear, twenty months.
19. For permanent and complete loss of hearing in both ears, sixty months.
20. The permanent and complete loss of the use of a finger, toe, arm, hand, foot or leg may be deemed the same as the loss of any such member by separation.
21. For the partial loss of use of a finger, toe, arm, hand, foot or leg, or partial loss of sight or hearing, fifty per cent of the average monthly wage during that proportion of the number of months in the foregoing schedule provided for the complete loss of use of such member, or complete loss of sight or hearing, which the partial loss of use thereof bears to the total loss of use of such member or total loss of sight or hearing. In this paragraph, "loss of use" means a loss of physical function of the affected member, sight or hearing. The effect on an

employee's ability to return to the employee's occupation at the time of the injury shall not be considered in establishing the percentage of loss under this section, except that if the employee is unable to return to the work the employee was performing at the time the employee was injured due to the total or partial loss of use, compensation pursuant to this section shall be calculated based on seventy-five per cent of the average monthly wage.

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

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

D. In determining the amount which represents the reduced monthly earning capacity for the purposes of subsections A and C of this section, consideration shall be given, among other things, to any previous disability, the occupational history of the injured employee, the nature and extent of the physical disability, the type of work the injured employee is able to perform subsequent to the injury, any wages received for work performed subsequent to the injury and the age of the employee at the time of injury. If the employee is unable to return to work or continue working in any employment after the injury due to the employee's termination from employment for reasons that are unrelated to the industrial injury, the commission may consider the wages that the employee could have earned from that employment as representative of the employee's earning capacity. A determination of earning capacity that is based on wages that could have been earned from previously terminated employment is subject to change under subsection F of this section and an employee retains the right to later establish that the employee's reduced earning capacity is related in whole or in part to the industrial injury.

E. In case there is a previous disability, as the loss of one eye, one hand, one foot or otherwise, the percentage of disability for a subsequent injury shall be determined by computing the percentage of the entire disability and deducting therefrom the percentage of the previous disability as it existed at the time of the subsequent injury.

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

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

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

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

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

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

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

H. Any single injury or disability that is listed in subsection B of this section and that is not converted into an injury or disability compensated under subsection C of this section by operation of this section shall be treated as scheduled under subsection B of this section regardless of its actual effect on the injured employee's earning capacity.

23-1045. Compensation for total disability; permanent total disability defined

A. For temporary total disability the following compensation shall be paid:

1. Compensation of sixty-six and two-thirds per cent of the average monthly wage shall be paid during the period of disability.

2. If there are persons dependent for support upon the employee, compensation shall be paid as provided in this section, with an additional allowance of twenty-five dollars per month for such dependents during the period of disability. The additional allowance shall not

be based upon a per capita number of dependents but shall reflect a total monthly benefit increase of exactly twenty-five dollars.

B. For permanent total disability, compensation of sixty-six and two-thirds per cent of the average monthly wage shall be paid during the life of the injured person.

C. In the absence of proof to the contrary, disability shall be deemed total and permanent if caused by:

1. The total and permanent loss of sight of both eyes.

2. The loss by separation of both feet.

3. The loss by separation of both hands.

4. An injury to the spine resulting in permanent and complete paralysis of both legs or both arms, or one leg and one arm.

5. An injury to the skull resulting in incurable imbecility or insanity.

6. The loss by separation of one hand and one foot.

D. The enumeration in this section is not exclusive, and in all other cases permanent total disability shall be determined in accordance with the facts and in accordance with the provisions of section 23-1047.

23-1046. Death benefits

A. In case of an injury causing death, the compensation therefor shall be known as a death benefit and shall be payable in the amount, for the period, and to and for the benefit of the following:

1. Burial expenses, not to exceed five thousand dollars, in addition to the compensation.

2. To the surviving spouse, if there are no children, sixty-six and two-thirds per cent of the average monthly wage of the deceased, to be paid until such spouse's death or remarriage, with two years' compensation in one sum upon remarriage. To the surviving spouse if there are surviving children, thirty-five per cent of the average monthly wage of the deceased, to be paid until such spouse's death or remarriage with two years' compensation in one sum upon remarriage, and to the surviving children, an additional thirty-one and two-thirds per cent of the average monthly wage, to be divided equally among them until the age of eighteen years, until the age of twenty-two years if the child is enrolled as a full-time student in any accredited educational institution, or if over eighteen years and incapable of self-support when the child becomes capable of self-support. When all surviving children are no longer eligible for benefits, the surviving spouse's benefits shall be paid as if there were no children. In the event of the subsequent death or remarriage of the surviving spouse, the surviving child's or children's benefits shall be computed pursuant to paragraph 3.

3. To a single surviving child, in the case of the subsequent death or remarriage of a surviving husband or wife, or if there is no surviving husband or wife, sixty-six and two-thirds per cent of the average monthly wage of the deceased, or if there is more than one surviving child, sixty-six and two-thirds per cent to be divided equally among the surviving children. Compensation to any such child shall cease upon death, upon marriage or upon

reaching the age of eighteen years, except, if over eighteen years and incapable of self-support, when he becomes capable of self-support, or if over eighteen years of age and enrolled as a full-time student in any accredited educational institution, when the child reaches age twenty-two.

4. To a parent, if there is no surviving husband, wife or child under the age of eighteen years, if wholly dependent for support upon the deceased employee at the time of his death, twenty-five per cent of the average monthly wage of the deceased during dependency, with an added allowance of fifteen per cent if two dependent parents survive, and, if neither parent is wholly dependent, but one or both partly dependent, fifteen per cent divided between them share and share alike.

5. To brothers or sisters under the age of eighteen years, if there is no surviving husband or wife, dependent children under the age of eighteen years or dependent parent, the following shall govern:

(a) If one of the brothers or sisters is wholly dependent upon the deceased employee for support at the time of injury causing death, twenty-five per cent of the average monthly wage until the age of eighteen years.

(b) If more than one brother or sister is wholly dependent, thirty-five per cent of the average monthly wage at the time of injury causing death, divided among such dependents share and share alike.

(c) If none of the brothers or sisters is wholly dependent, but one or more are partly dependent, fifteen per cent divided among such dependents share and share alike.

B. If the deceased employee leaves dependents only partially dependent upon his earnings for support at the time of the injury, the monthly compensation shall be equal to such proportion of the monthly payments for the benefit of persons totally dependent as the amount contributed by the employee to such partial dependents bears to the average wage of the deceased at the time of the injury resulting in his death. The duration of compensation to partial dependents shall be fixed by the commission in accordance with the facts shown, and in accordance with the provisions of section 23-1047, but shall in no case exceed compensation for one hundred months.

C. In the event of death of a dependent before expiration of the time named in the award, the funeral expenses of such person, not to exceed eight hundred dollars, shall be paid.

23-1047. Procedure for determining compensation for partial disability and permanent total disability in cases not enumerated; procedure for determining nonscheduled dependency and duration of compensation to partial dependents in death cases

A. In cases of permanent partial disability under section 23-1044, subsection B, paragraph 22 and subsections C and F, when the physical condition of the injured employee becomes stationary, or in the case of permanent total disability not enumerated in section

23-1045, and under section 23-1045, subsection D, or in death cases under section 23-1046, subsection B, the employer or insurance carrier within thirty days shall notify the commission and request that the claim be examined and further compensation, if any, be determined. A copy of all medical reports necessary to make such determination also shall be furnished to the commission. The employer or insurance carrier may commence payment of a permanent disability award without waiting for a determination under subsection B of this section.

B. Within thirty days after the commission receives the medical reports, the claims shall be examined and further compensation, including a permanent disability award, if any, determined under the commission's supervision. If necessary, the commission may require additional medical or other information with respect to the claim and may postpone the determination for not more than sixty additional days. Any determination under this subsection may include necessary adjustments in any compensation paid or payable.

C. The commission shall mail a copy of the determination to all interested parties. Any such party may request a hearing under section 23-941 on the determination made under subsection B of this section within ninety days after copies of the determination are mailed.

D. Any person receiving permanent compensation benefits shall report annually on the anniversary date of the award to the self-insured employer or insurance carrier all of the person's earnings for the prior twelve-month period. In the event the person fails to make such report the self-insured employer or insurance carrier shall notify the person that such report has not been received and that payment of further benefits will be suspended unless such report of earnings is filed within thirty days. After thirty days have elapsed from the date of such notice, the self-insured employer or insurance carrier may issue a notice to the person suspending payment of further benefits and no further payments need be made until such report of earnings is filed.

E. Any person receiving permanent compensation benefits from the special fund established by section 23-1065 shall report annually on the anniversary date of the award to the industrial commission all of the person's earnings for the prior twelve-month period. In the event the person fails to make such report the industrial commission shall notify the person that such report has not been received and that payment of further benefits will be suspended unless such report of earnings is filed within thirty days. After thirty days have elapsed from the date of such notice, the industrial commission may issue a notice to the person suspending payment of further benefits and no further payments need be made until such report of earnings is filed.

23-1048. Reasonable accommodations; earning capacity determination; definitions

A. If an employer has made reasonable accommodations pursuant to the Americans with disabilities act or other applicable federal or state law, wages payable for the modified job position shall be included in the determination of any temporary partial or permanent partial earning capacity, notwithstanding that the modified job is not available in the open competitive labor market.

B. For the purposes of this section:

1. "Americans with disabilities act" means 42 United States Code sections 12101 through 12213 and 47 United States Code sections 225 and 611 and the ADA amendments act of 2008 (P.L. 110-325; 122 Stat. 3553).

2. "Reasonable accommodations" means accommodations made by the date of injury employer to allow an employee to return to work by modifying job duties consistent with the employee's limitations.

23-1061. Notice of accident; form of notice; claim for compensation; reopening; payment of compensation

A. Notwithstanding section 23-908, subsection E, no claim for compensation shall be valid or enforceable unless the claim is filed with the commission by the employee, or if resulting in death by the parties entitled to compensation, or someone on their behalf, in writing within one year after the injury occurred or the right thereto accrued. The time for filing a compensation claim begins to run when the injury becomes manifest or when the claimant knows or in the exercise of reasonable diligence should know that the claimant has sustained a compensable injury. Except as provided in subsection B of this section, neither the commission nor any court shall have jurisdiction to consider a claim which is not timely filed under this subsection, except if the employee or other party entitled to file the claim has delayed in doing so because of justifiable reliance on a material representation by the commission, employer or insurance carrier or if the employee or other party entitled to file the claim is insane or legally incompetent or incapacitated at the time the injury occurs or the right to compensation accrues or during the one-year period thereafter. If the insanity or legal incompetence or incapacity occurs after the one-year period has commenced, the running of the remainder of the one-year period shall be suspended during the period of insanity or legal incompetence or incapacity. If the employee or other party is insane or legally incompetent or incapacitated when the injury occurs or the right to compensation accrues, the one-year period commences to run immediately upon the termination of insanity or legal incompetence or incapacity. The commission upon receiving a claim shall give notice to the carrier.

B. Failure of an employee or any other party entitled to compensation to file a claim with the commission within one year or to comply with section 23-908 shall not bar a claim if the insurance carrier or employer has commenced payment of compensation benefits under section 23-1044, 23-1045 or 23-1046, except that the payments provided for by section 23-1046, subsection A, paragraph 1 and section 23-1065, subsection A shall not be considered compensation benefits for the purposes of this section.

C. If the commission receives a notification of the injury, the commission shall send a claim form to the employee.

D. The issue of failure to file a claim must be raised at the first hearing on a claim for compensation in respect to the injury or death.

E. Within ten days after receiving notice of an accident, the employer shall inform his insurance carrier and the commission on such forms as may be prescribed by the commission.

F. Each insurance carrier and self-insuring employer shall report to the commission a notice of the first payment of compensation and shall promptly report to the commission and to the employee by mail at his last known address any denial of a claim, any change in the amount of compensation and the termination thereof, except that claims for medical, surgical and hospital benefits which are not denied shall be reported to the commission in the form and manner determined by the commission. In all cases where compensation is payable, the carrier or self-insuring employer shall promptly determine the average monthly wage pursuant to section 23-1041. Within thirty days of the payment of the first installment of compensation, the carrier or self-insuring employer shall notify the employee and commission of the average monthly wage of the claimant as calculated, and the basis for such determination. The commission shall then make its own independent determination of the average monthly wage pursuant to section 23-1041. The commission shall within thirty days after receipt of such notice notify the employee, employer and carrier of such determination. The amount determined by the commission shall be payable retroactive to the first date of entitlement. The first payment of compensation shall be accompanied by a notice on a form prescribed by the commission stating the manner in which the amount of compensation was determined.

G. Except as otherwise provided by law, the insurance carrier or self-insuring employer shall process and pay compensation and provide medical, surgical and hospital benefits, without the necessity for the making of an award or determination by the commission.

H. On a claim that has been previously accepted, an employee may reopen the claim to secure an increase or rearrangement of compensation or additional benefits by filing with the commission a petition requesting the reopening of the employee's claim upon the basis of a new, additional or previously undiscovered temporary or permanent condition, which petition shall be accompanied by a statement from a physician setting forth the physical condition of the employee relating to the claim. A claim shall not be reopened if the initial claim for compensation was previously denied by a notice of claim status or determination by the commission and the notice or determination was allowed to become final and no exception applies under section 23-947 excusing a late filing to request a hearing. A claim shall not be reopened because of increased subjective pain if the pain is not accompanied by a change in objective physical findings. A claim shall not be reopened solely for additional diagnostic or investigative medical tests, but expenses for any reasonable and necessary diagnostic or investigative tests that are causally related to the injury shall be paid by the employer or the employer's insurance carrier. Expenses for reasonable and necessary medical and hospital care and laboratory work shall be paid by the employer or the employer's insurance carrier if the claim is reopened as provided by law and if these expenses are incurred within fifteen days of the date that the petition to reopen is filed. The payment for such reasonable and necessary medical, hospital and laboratory work expense shall be paid for by the employer or the employer's insurance carrier if the claim is reopened as provided by law and if such expenses are incurred within fifteen days of the filing of the petition to reopen. Surgical benefits are not payable for any period prior to the date of filing a petition to reopen, except that surgical benefits are payable for a period prior to the date of filing the petition to reopen not to exceed seven days if a bona fide medical emergency precludes the employee from filing a petition to

reopen prior to the surgery. No monetary compensation is payable for any period prior to the date of filing the petition to reopen.

I. Upon the filing of a petition to reopen a claim the commission shall in writing notify the employer's insurance carrier or the self-insuring employer, which shall in writing notify the commission and the employee within twenty-one days after the date of such notice of its acceptance or denial of the petition. The reopened claim shall be processed thereafter in like manner as a new claim.

J. The commission shall investigate and review any claim in which it appears to the commission that the claimant has not been granted the benefits to which such claimant is entitled. If the commission determines that payment or denial of compensation is improper in any way, it shall hold a hearing pursuant to section 23-941 within sixty days after receiving notice of such impropriety. Any claim for temporary partial disability benefits under this subsection must be filed with the commission within two years after the date the claimed entitlement to compensation accrued or within two years after the date on which an award for benefits encompassing the entitlement period becomes final. A claim for temporary partial disability compensation shall be deemed to accrue when the employee knew or with the exercise of reasonable diligence should have known that the carrier, self-insured employer or special fund denied or improperly paid compensation. A claim for temporary partial disability benefits shall not be deemed to have accrued any earlier than the effective date of this amendment to this subsection.

K. When there is a dispute as to which employer, or insurance carrier, is liable for the payment of a compensable claim, the commission, by order, may designate the employer or insurance carrier which shall pay the claim. Payment shall begin within fourteen days after the employer or insurance carrier has been ordered by the commission to commence payment. When a final determination has been made as to which employer or insurance carrier is actually liable, the commission shall direct any necessary monetary adjustment or reimbursement among the parties or carriers involved.

L. Upon application to the commission, and for good cause shown, the commission may direct that a document filed as a claim for compensation benefits be designated as a petition to reopen, effective as of the original date of filing. In like manner upon application and good cause shown, the commission may direct that a document filed as a petition to reopen be designated a claim for compensation benefits, effective as of the original date of filing.

M. If the insurance carrier or self-insurer does not issue a notice of claim status denying the claim within twenty-one days from the date the carrier is notified by the commission of a claim or of a petition to reopen, the carrier shall pay immediately compensation as if the claim were accepted, from the date the carrier is notified by the commission of a claim or petition to reopen until the date upon which the carrier issues a notice of claim status denying such claim. Compensation includes medical, surgical and hospital benefits. This section shall not apply to cases involving seven days or less of time lost from work.

23-1061.01. Treatment by prayer or spiritual means

Nothing in this chapter shall be construed to prevent a workman, whose injury or disability has been established to the satisfaction of the commission, from relying in good faith on treatment by prayer through spiritual means in accordance with the tenets and practice of a recognized church or religious denomination by a duly accredited practitioner thereof without suffering reduction or suspension of his compensation benefits under this chapter, provided that nothing in this chapter shall be construed to prevent a workman who desires it from being furnished with such treatment by prayer through spiritual means if the commission does not object thereto.

23-1062. Medical, surgical, hospital benefits; commencement of compensation; method of compensation

A. Promptly, on notice to the employer, every injured employee shall receive medical, surgical and hospital benefits or other treatment, nursing, medicine, surgical supplies, crutches and other apparatus, including artificial members, reasonably required at the time of the injury, and during the period of disability. Such benefits shall be termed "medical, surgical and hospital benefits."

B. The first installment of compensation is to be paid no later than the twenty-first day after written notification by the commission to the carrier of the filing of a claim except where the right to compensation is denied. Thereafter, compensation shall be paid at least once each two weeks during the period of temporary total disability and at least monthly thereafter. Compensation shall not be paid for the first seven days after the injury. If the incapacity extends beyond the period of seven days, compensation shall begin on the eighth day after the injury, but if the disability continues for one week beyond such seven days, compensation shall be computed from the date of the injury.

C. Compensation shall be made by negotiable instrument, payable immediately on demand or, at the election of the employee and if offered by the employer or carrier, by another commonly accepted method for transferring money by banking institutions, including electronic fund transfers to the employee's account or a prepaid debit card account that is established for the purpose of making direct electronic payment to the employee.

23-1062.01. Timely payment of medical, surgical and hospital benefit billing; content of bills; contracts between providers and carriers; exceptions; definitions

A. An insurance carrier, self-insured employer or claims processing representative shall make a determination whether to deny or pay a medical bill on an accepted claim, in whole or in part, including the decision as to the amount to pay, within thirty days from the date the

claim is accepted, if the billing is received before the date of acceptance, or within thirty days from the date of receipt of the billing if the billing is received after the date of acceptance. All billing denials shall be based on reasonable justification. The insurance carrier, self-insured employer or claims processing representative shall pay the approved portion of the billing within thirty days after the determination for payment is made. If the billing is not paid within the applicable time period, the insurance carrier, self-insured employer or claims processing representative shall pay interest to the health provider on the billing at a rate that is equal to the legal rate. Interest shall be calculated beginning on the date that the payment to the health care provider is due.

B. Any billing by a health care provider shall include all of the following:

1. The correct demographic patient information and claim number, if known.

2. The correct health care provider information, including name, address, telephone number and federal taxpayer identification number.

3. The appropriate medical coding with dollar amounts and units clearly stated with all descriptions.

4. Clearly printed date or dates of service.

5. Legible medical reports required for each date of service if the billing is for direct treatment of the injured worker.

C. An insurance carrier, self-insured employer or claims processing representative is not responsible for payment of any billings for medical, surgical or hospital benefits provided under this chapter unless the billings are received by the insurance carrier, self-insured employer or claims processing representative and any court action for the payment of the billings is commenced within twenty-four months from the date on which the medical service was rendered or from the date on which the health care provider knew or should have known that service was rendered on an industrial claim, whichever occurs later. A subsequent billing or corrective billing does not restart the limitations period.

D. An injured worker is not responsible for payment of any portion of a medical bill for services rendered on an accepted claim and is not responsible for payment of any disputed amount between a health care provider and the insurance carrier, self-insured employer or claims processing representative.

E. An insurance carrier, self-insured employer or claims processing representative that is subject to this chapter may establish an internal system for resolving payment disputes and other contractual grievances with health care providers.

F. This section does not apply to health care providers that enter into an express written contract with the insurance carrier, the self-insured employer or a claims processing representative that specifies the period in which approved bills shall be paid and that includes contractual remedies for untimely bill payment. If the contract does not include remedies for untimely payment, payment must be made according to the provisions of the contract but the interest penalty prescribed by subsection A of this section shall apply to any late payment. The commission does not have jurisdiction over disputes involving timely payment of billings under contracts between the insurance carrier, self-insured employer or claims processing representative and the health care provider.

G. For the purposes of this section:

1. "Accepted claim" means a claim for benefits under this chapter that has been accepted by a final notice of claim status or final order or award of the commission.

2. "Date of receipt" means the electronic acknowledgement date or, if a bill does not contain an electronic acknowledgment date, the date of receipt is presumed to occur five days after the bill was mailed to the recipient's address.

23-1062.02. Off-label and prescription use of controlled substances; prescription of schedule II controlled substances; reports; treatment plans; monitoring program inquiries; preauthorizations; definitions

A. A physician shall include in the report required under commission rule information pertaining to the following:

1. The off-label use of a narcotic, opium-based controlled substance or schedule II controlled substance by a claimant.

2. The use of a narcotic or opium-based controlled substance or the prescription of a combination of narcotics or opium-based controlled substances at or exceeding a one hundred twenty milligram morphine equivalent dose per day.

3. The prescription of a long-acting or controlled release opioid for acute pain.

B. The information required pursuant to subsection A of this section shall include the justification for use of the controlled substance, and a treatment plan that includes a description of measures that the physician will implement to monitor and prevent the development of abuse, dependence, addiction or diversion by the employee. The physician shall include in the treatment plan a medication agreement, a plan for subsequent follow-up visits and random drug testing and documentation that the medication regime is providing relief that is demonstrated by clinically meaningful improvement in function. If the drug test of the employee reveals inconsistent results, the physician within five business days shall provide a written report to the carrier, self-insured employer or commission setting forth a treatment plan to address the inconsistent drug test results.

C. Within two business days of writing or dispensing an initial prescription order for at least a thirty-day supply of an opioid medication for the employee, a physician shall submit an inquiry to the Arizona state board of pharmacy requesting the employee's prescription information that is compiled under the controlled substances prescription monitoring program prescribed in title 36, chapter 28. The physician shall report the results to the carrier, self-insured employer or commission as soon as reasonably practicable but no later than thirty days from the date of the inquiry. Thereafter, the carrier, self-insured employer or commission may request no more than once every two months that the physician perform additional inquiries to the Arizona state board of pharmacy.

D. If the result of an inquiry to the Arizona state board of pharmacy reveals that the employee is receiving opioids from another undisclosed health care provider, the physician

shall within five business days report the results to the carrier, self-insured employer or commission.

E. If the physician does not comply with this section:

1. The carrier, self-insured employer or commission is not responsible for payment for the physician's services until the physician complies with this section.

2. Except for a self-insured employer that provides medical care pursuant to section 23-1070, an employer, carrier or commission may request a change of physician after making a written request to the physician to comply with this section and the request identifies the area of noncompliance. If a change of physician is ordered and the order becomes final, the employee shall select a physician whose practice includes pain management and who agrees to comply with this section. If other medical providers are not available in the employee's area of residence, the employer, carrier or commission shall pay in advance for the employee's reasonable travel expenses, including the cost of transportation, food, lodging and loss of pay, if applicable.

F. If medically necessary, the carrier, self-insured employer or commission shall provide drug rehabilitation and detoxification treatment for an employee who becomes dependent on or addicted to opioids that are prescribed for a work-related injury. In the event of a medical conflict regarding the necessity for drug rehabilitation and detoxification, the carrier, self-insured employer or commission shall continue to provide the opioids until a determination is made after a hearing by an administrative law judge.

G. If the employee resides out of state, the carrier, self-insured employer or commission may not be responsible for providing medications that are subject to this section if the out-of-state physician fails to comply with this section. If the other state has a controlled substances monitoring program, the physician shall submit an inquiry to the database as prescribed by subsection C of this section.

H. This section does not apply to medications administered to the employee while the employee is receiving inpatient hospital treatment.

I. A carrier, self-insured employer or commission may require physician compliance with this section notwithstanding the existence of a prior award addressing medical maintenance benefits for medications. A carrier or self-insured employer is not liable for bad faith or unfair claims processing for any act taken in compliance of and consistent with this section.

J. For the purposes of this section:

1. "Clinically meaningful improvement in function" means any of the following:

(a) A clinically documented improvement in range of motion.

(b) An increase in the performance of activities of daily living.

(c) A return to gainful employment.

2. "Inconsistent results" means:

(a) The employee's reported medications, including the parent drugs or metabolites, are not detected.

(b) Controlled substances are detected that are not reported by the employee.

3. "Off-label use" means use of a prescription medication by a physician to treat a condition other than the use for which the drug was approved by the United States food and drug administration.

23-1062.03. Evidence based medical treatment guidelines

The commission shall develop and implement a process for the use of evidence based medical treatment guidelines, where appropriate, to treat injured workers no later than December 31, 2014. The commission shall provide a progress report to the governor, the president of the senate and the speaker of the house of representatives describing the status of the development and implementation of this process no later than the end of each calendar year beginning on December 31, 2012, and ending on December 31, 2014. If the commission requires additional time beyond December 31, 2014, to develop and implement this process, then the commission shall include in its 2014 report a projected timetable to complete the process.

23-1063. Apportionment of compensation

Compensation to a dependent widow or widower shall be for the use and benefit of the widow or widower and the dependent children, and the commission may, upon proper application at any time during the duration of such payments, apportion the compensation between them in such way as it deems best for the interest of all beneficiaries.

23-1064. Presumptions of dependency; determination

A. The following persons are conclusively presumed to be totally dependent for support upon a deceased employee:

1. A wife upon a husband whom she has not voluntarily abandoned at the time of the injury.

2. A husband upon a wife whom he has not voluntarily abandoned at the time of the injury.

3. A natural, posthumous or adopted child under the age of eighteen years or under the age of twenty-two years if enrolled as a full-time student in any accredited educational institution, or over that age if physically or mentally incapacitated from wage earning, upon the injured parent. Stepparents may be regarded as parents, if dependent, and a stepchild as a natural child if dependent.

B. Questions of dependency and the extent thereof shall be determined as of the date of the injury to the employee and the dependent's right to any death benefit shall become fixed

as of such time irrespective of any subsequent change in conditions, and the death benefits shall be directly recoverable by and payable to the dependent entitled thereto.

23-1065. Special fund; purposes; investment committee

A. The industrial commission may direct the payment into the state treasury of not to exceed one 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 G. Such assessments shall be computed on the same premium basis as provided for in section 23-961, subsections G, H, I, J and 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 with disabilities 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 receiving notice the commission may expend funds from the special fund created by this section for travel and discovery procedures and for the employment of such independent legal, medical, rehabilitation, claims or labor market consultants or experts as may be deemed necessary by the commission to assist in the determination of the liability of the special fund, if any, under subsection B or C of this section. In the event there is any dispute regarding liability to the special fund pursuant to subsection B or C of this section, the commission shall not delay the issuance of a permanent award pursuant to section 23-1047, subsection B.

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

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

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

H. On receiving notice that the special fund may be liable under this chapter, the commission may spend monies from the special fund established by this section for expenses

that are necessary to assist in the processing, payment or determination of liability of the fund. These expenses may include travel, discovery procedures and employing any legal, medical, rehabilitation, claims or labor market consultant, examiner or expert.

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

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

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

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

1. Compensation of fifty dollars for each day while in actual 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 38-718.

P. In addition to the investments authorized under section 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.

23-1066. Minor or incompetent claimant; appointment of guardian ad litem; procedure

A. When it appears to the commission that a claimant for compensation or death benefits is a minor or incompetent person, the commission may, upon motion of any party to the proceedings or upon its own motion, appoint a trustee or guardian ad litem to appear for and represent the minor or incompetent person, upon such terms and conditions as it deems proper under this chapter or under the rules of the commission made pursuant thereto. If required by the commission, the trustee or guardian shall give bond in the form and character required by law from a guardian appointed by a superior court, and in such amount as the commission determines. The bond shall be approved by the commission, and the trustee or guardian shall not be discharged from liability until he files an account with the commission or with the superior court in the county in which the minor or incompetent person resides, and until the account, after due notice, is approved.

B. The trustee or guardian shall receive such compensation for his services as is fixed and allowed by the commission or by a superior court.

23-1067. Commutation of compensation to lump sum payment

A. The commission may allow commutation of the compensation awarded pursuant to section 23-1044, subsection B to a lump sum payment of not to exceed twenty-five thousand dollars, with or without the consent of the carrier liable for the commutation, under such rules,

regulations and system of computation as it devises for obtaining the present value of the compensation.

B. The commission may allow commutation of compensation pursuant to section 23-1044, subsection C, and section 23-1045, subsections B, C and D, to a lump sum of not to exceed twenty-five thousand dollars for commutation requests made before July 1, 1987, fifty thousand dollars for commutation requests made from and after June 30, 1987 but before July 1, 2007 and one hundred fifty thousand dollars for commutation requests made from and after June 30, 2007, with the consent of the carrier liable to pay the claim, under such rules, regulations and system of computation as it devises for obtaining the present value of the compensation.

23-1068. Assignment of compensation; exemption from attachment or execution; payment to nonresident

A. Compensation, whether determined or not, is not, prior to the delivery of the warrant therefor, assignable.

B. Except as provided in subsection D of this section, compensation is exempt from attachment, garnishment and execution and does not pass to another person by operation of law, except that:

1. The amount of compensation payable to a person at the time of death, whether payable in periodic payments or converted to a lump sum, and whether or not the warrant therefor has been issued or delivered after that person's death, shall be paid to that person's personal representative.

2. If medical, wage loss or disability benefits are paid or otherwise provided by an employer to or for the benefit of an employee for an injury or illness for which medical or compensation benefits payable pursuant to this article have been denied or for which a claim for compensation under this article has not been filed, and the injury or illness is subsequently determined to be compensable under this article, the employer or the person authorized by the employer to provide such benefits is entitled to a direct payment out of, or a direct credit against, the medical or compensation benefits payable under this article in the amount of the benefits previously paid or provided.

C. Any dispute as to the amount of the direct payment or credit against the medical or compensation benefits payable shall be resolved pursuant to section 23-1061, subsection J.

D. Compensation is subject to an assignment for the payment of support as defined in section 25-500, spousal maintenance and the fee for handling child support and spousal maintenance payments authorized by section 25-510.

E. Payment to the consular agent, or the consular agent's representative, of the nation of which a dependent is a resident or subject, of compensation due the dependent residing outside the United States, any power of attorney to receive or receipt for such compensation to

the contrary notwithstanding, is a full discharge of the benefits or compensation as if made directly to the beneficiary.

23-1069. Attorney's fees; payment; time limitation

A. In proceedings before the commission in which an attorney employed by the claimant has rendered services reasonably necessary in processing the claim, the commission shall, upon application filed by the attorney or the claimant prior to a final disposition of the case, set a reasonable attorney's fee and shall provide for the payment thereof from the award, in installments or otherwise, as the commission determines proper in view of the award made, and shall further provide for the payment of the attorney's fee direct to the attorney. The commission shall charge the amount of the payment against the award to the claimant.

B. The attorney's fee provided for in subsection A shall be not more than twenty-five per cent up to ten years from the date of the award. In cases involving solely loss of earning capacity, the maximum shall be twenty-five per cent up to five years from the date of the final award. When the payment of the award to the claimant is made in installments, or in other than a lump sum manner, in no event may an amount in excess of twenty-five per cent of any one such installment payment be withheld for the attorney's fee.

C. The reasonableness of the attorney's fee set pursuant to subsection A shall be reviewable upon the application of the claimant or the attorney in the same manner as other awards of the commission.

23-1070. Medical, surgical and hospital benefits provided by employer; pilot program

A. An employer, other than this state or a political subdivision of this state, who secures compensation to his employees in the manner provided in section 23-961, subsection A, paragraph 1 or 2, alone or jointly with other employers, in lieu of making premium payments for medical, surgical and hospital benefits, may provide such benefits to injured employees and may collect one-half of the cost thereof from his employees, not to exceed one dollar per month from any employee, which may be deducted from the wages of the employee.

B. An employer electing to provide such benefits shall notify his insurance carrier and the commission of the election and render a detailed statement of the arrangements made therefor to the commission.

C. An employer who maintains a hospital for his employees or who contracts with a physician for the hospital care of injured employees, on or before January 30 each year, shall make a verified written report to the commission for the preceding year showing the total amount of hospital fees collected and showing separately the amount contributed by the employees and the amount contributed by the employers. The report shall also contain an

itemized account of the expenditures, investments or other disposition of the fees, and a statement showing the balance remaining.

D. An employer who fails to notify his insurance carrier and the commission of his election to provide such benefits, or who maintains a hospital or contracts for hospital service as provided in subsection C of this section, and fails to make the financial report required therein, is liable for such benefits as provided in section 23-1062.

E. If the medical, surgical or hospital aid or treatment being furnished by an employer is such that there is reasonable ground to believe that the health, life or recovery of any employee is endangered or impaired thereby, the commission, upon application of the employee or upon its own motion, may order a change of physicians or other conditions. If the employer fails to comply with the order promptly, the injured employee may elect to have medical, surgical or hospital aid or treatment provided by or through the special fund established by section 23-1065. In that event the claim of the injured employee against the employer shall be assigned to the special fund for the benefit thereof, and the special fund shall furnish to the insured employee medical, surgical or hospital aid or treatment as provided in this chapter.

F. Notwithstanding subsection A of this section, a pilot program is established to allow a city with a population of more than one hundred fifty thousand persons and a self-insured county insurance pool to provide medical, surgical and hospital benefits pursuant to this section. The purpose of the pilot program is to determine whether public sector entities that are self-insured can, through a directed care and medical management program, contain costs and improve health care and return to work results for injured employees. The industrial commission shall select the qualified city. The entities participating in the pilot program shall consult with the industrial commission on the protocol for assessment and reporting and shall submit all baseline data to the commission before the pilot program can begin. No earlier than January 1, 2012 and not later than January 1, 2013, the pilot program participants may begin providing medical, surgical and hospital benefits pursuant to this section on approval by the industrial commission. This subsection does not exempt pilot program participants from any other requirements for procurement of a medical network to direct care. The pilot program participants shall report in accordance with the protocol for assessment and reporting, with a final report two years after the start of the pilot program. The pilot program ends and pilot program participants may not provide medical, surgical and hospital benefits pursuant to this section from and after December 31, 2014.

23-1070.01. Request for early hearing; stipulation; action of commission

A. If a request for hearing filed in connection with a change of physician under section 23-1070 alleges, by affidavit, that immediate and irreparable injury, loss or damage will result if such hearing is not held prior to the times otherwise prescribed by article 3 of this chapter or if all interested parties, in person or by counsel, stipulate in such request for hearing that such

hearing should be held prior to the times otherwise prescribed by article 3 of this chapter, the commission shall:

1. Immediately issue a notice to all parties setting a hearing date not more than fifteen days later.

2. Require that the administrative law judge, who shall not be subject to the affidavit for change prescribed by section 23-941, subsection I, determine the matter and make an award, if any, within five days after completion of the hearing.

B. All other procedures prescribed for subsequent actions with regard to such hearing or award shall be as otherwise prescribed by law.

23-1071. Notice by employees with disabilities of absence from locality or state; failure to give notice; change of doctor

A. No employee may leave the state of Arizona for a period exceeding two weeks while the necessity of having medical treatment continues, without the written approval of the commission. Any employee leaving the state of Arizona for a period exceeding two weeks without such approval will forfeit the employee's right to compensation during such time, as well as the employee's right to reimbursement for the employee's medical expenses, and any aggravation of the employee's disability, by reason of the violation of this section, will not be compensated. If an administrative law judge approves an employee's request to leave this state after the request for written approval was initially denied by the commission, the employee is entitled to any forfeited compensation and medical benefits from the date the employee first requested the written approval.

B. No employee may change doctors without the written authorization of the insurance carrier, the commission or the attending physician.

23-1072. Autopsy in death claims; effect of refusal by claimant

A. On filing a claim for compensation for death from an industrial injury or occupational disease where in the opinion of the commission it is necessary to ascertain accurately and scientifically the cause of death, an autopsy may be ordered by the commission upon request of an interested party and notice to the employer to be made by a qualified pathologist designated by the commission. Any interested person may designate a duly licensed physician to attend such autopsy, and the findings of the pathologist performing the autopsy shall be filed with the commission and shall be a public record.

B. All proceedings for compensation shall be suspended upon refusal of a claimant or claimants to permit the autopsy when so ordered.

C. Where an autopsy has been performed pursuant to an order of the commission, no action shall lie against any person, firm or corporation for participating in or requesting such autopsy.

23-1073. Processing of prior claims

The commission appointed pursuant to the provisions of chapter 1 of this title shall process all claims for injuries or disabling conditions which occurred prior to January 1, 1969 to the entry of a final award in accordance with the procedure and benefit levels in effect prior to January 1, 1969. Petitions to reopen filed subsequent to January 1, 1969 shall be processed in accordance with the procedural provisions of this chapter.

23-1081. Administrative fund; purposes and administration

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 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 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.

23-1091. Assigned risk plan

A. An insurer may decline to issue a workers' compensation or occupational disease policy to an employer. An employer who is refused coverage by two or more insurers shall be placed in the assigned risk plan established by this section.

B. There shall be only one workers' compensation assigned risk plan in this state. The director of the department of insurance shall contract with a qualified party to be the assigned risk plan administrator.

C. The administrator may charge all insurers transacting workers' compensation insurance in this state a reasonable fee to administer the assigned risk plan. Each insurer shall pay a share of the fee based on the insurer's share of the preceding calendar year's total net direct workers' compensation and occupational disease compensation insurance premiums written in this state.

D. The assigned risk plan administrator shall develop a plan of operation and, on approval by the director of the department of insurance, shall issue a directive for the equitable apportioning of assigned risks among all the insurers. At any time, the director of the department of insurance may require the assigned risk plan administrator to amend the plan of operation. The plan shall include at least the following:

1. A method for the administrator to select one or more insurers transacting workers' compensation insurance in this state to act as servicing carriers. An administrator that is an insurer may act as its own servicing carrier. The administrator shall monitor the performance of the servicing carriers and shall measure performance against the administrator's established standards. A servicing carrier shall:

(a) Provide coverage for the risks placed in the assigned risk plan.

(b) Pay claims.

(c) Provide safety management services.

(d) Perform other activities that are related to the preliminary and subsequent effectuation of the contract and that arise out of the contract, including paying commissions to any licensed property and casualty agent or broker in this state.

2. A method for apportioning the workers' compensation assigned risks among all insurers.

E. Unless the director decides to use another method, the rates used to determine the premiums of risks in the assigned risk plan are the rates annually filed with the director of the department of insurance by the designated rating organization pursuant to section 20-357, subsection B, unless the director requires the use of rates from another rating organization, plus a uniform percentage increase that applies to all classifications, that is determined by the designated rating organization or, if the director directs, another rating organization and that is

subject to approval by the director. The expected loss rates, ballast factors and other factors for use with the uniform experience rating plan as described in title 20, chapter 2, article 4 and filed with the director also apply to experience rated risks in the assigned risk plan.

F. Rating classifications used in the assigned risk plan shall conform to the uniform classification plan. Subclassifications and rating rule deviations shall not be used in the assigned risk plan.

G. All insurers participating in workers' compensation or occupational disease compensation insurance shall participate in the assigned risk plan.

H. Distribution of assignments among insurers shall be made in proportion to each insurer's share of the preceding calendar year's total net direct workers' compensation and occupational disease compensation insurance premium written in this state, as far as practicable.

I. An insurer that refuses to participate in the assigned risk plan shall not be authorized to write workers' compensation coverage in this state. If an insurer refuses to participate in the assigned risk plan after being authorized to write workers' compensation coverage in this state, the insurer's authorization shall be revoked. If an insurer withdraws from or is terminated from writing workers' compensation coverage in this state, the insurer remains responsible for all injuries sustained during the period of coverage stated in the policies of that insurer.

23-1101. Definition of report

In this article, unless the context otherwise requires, "report" means the report prescribed by section 23-1102.

23-1102. Workers' compensation presumptions of compensability; report

A person that advocates a legislative proposal shall submit a report to the joint legislative audit committee as prescribed in this article, if the legislative proposal if enacted would do either of the following:

1. Mandate that an insurer or self-insured employer deem that a disease or condition has arisen out of employment, including establishing a presumption of compensability.

2. Substantially modify a statute that establishes a presumption of compensability for a disease or condition.

23-1103. Impact of presumptions; liability

A. The report shall include all of the following:

1. Scientific evidence that shows the extent to which:

(a) Peer reviewed scientific studies exist that document a causal relationship that a specific disease or condition has been demonstrated to have arisen out of employment.

(b) The centers for disease control and prevention have determined that a disease or condition is acquired or transmitted.

(c) Alternative exposure patterns exist for acquiring or transmitting a disease or condition other than occupational.

2. Financial information to indicate the extent to which:

(a) The mandate may cause an employer or insurance carrier to pay a workers' compensation claim for a nonwork related disease or condition.

(b) The mandate may increase costs to self-insured employers or premiums charged by insurance carriers.

3. An explanation of why existing compensability methods are inadequate to accurately determine if a disease or condition is acquired or transmitted in the course of employment.

B. The report shall address the specific language of the legislative proposal.

C. A person that does not submit a report as prescribed in this article is not subject to any civil sanction or criminal penalty.

23-1104. Report procedures and deadlines

A report must be submitted to the joint legislative audit committee on or before September 1 before the start of the legislative session for which the legislation is proposed. The joint legislative audit committee shall assign the written report to the appropriate legislative committee of reference established pursuant to section 41-2954. The legislative committee of reference shall hold at least one hearing and take public testimony after receiving the report. The legislative committee of reference shall study the written report and deliver a report of its recommendations to the joint legislative audit committee, the speaker of the house of representatives, the president of the senate, the governor and the commission on or before December 1 of the year in which the report is submitted.