



# Arizona State Senate Issue Brief

August 3, 2018

## Note to Reader:

The Senate Research Staff provides nonpartisan, objective legislative research, policy analysis and related assistance to the members of the Arizona State Senate. The *Research Briefs* series is intended to introduce a reader to various legislatively related issues and provide useful resources to assist the reader in learning more on a given topic. Because of frequent legislative and executive activity, topics may undergo frequent changes. Nothing in the Brief should be used to draw conclusions on the legality of an issue.

## STATE COMPENSATION FUND OF ARIZONA

### INTRODUCTION

The State Compensation Fund (SCF) of Arizona provides mandatory workers' compensation coverage and services for Arizona businesses and their employees.

### HISTORY AND OVERVIEW

The SCF was created in 1925 by the Legislature as part of Arizona's original Workman's Compensation Act (Act). The Act provided start-up capital of \$100,000 for the SCF and required the SCF to repay the amount. The capital was fully repaid by 1938. From 1925 through 1968, the Industrial Commission of Arizona (ICA) administered the SCF. Beginning in 1969, the SCF was removed from the ICA, becoming a separate entity.

The SCF's mission is to provide a ready market of workers' compensation insurance for Arizona's employers at the lowest possible cost. The SCF is a nonprofit agency. All income is derived from policyholders' premiums and investments. Income that is not used to provide benefits to injured workers or for operating expenses is returned to policyholders in the form of dividends. The SCF is required to submit its budget for the two ensuing calendar years October 1 of each even-numbered year for review and approval by the Joint Legislative Budget Committee.

The SCF is under the direct supervision of a Board of Directors, which consists of five members appointed by the Governor for staggered five-year terms. The members are required to be policyholders or employees of a policyholder of the SCF. Additionally, the Governor annually appoints the chairman of the Board from among its members. The Board is required to appoint a manager of the SCF, who is responsible for the SCF's daily operations.

By Board resolution, the SCF voluntarily operates as the "carrier of last resort." The SCF will insure any Arizona business providing that it pays the appropriate premium and has not committed fraud

against an insurance company. Should an Arizona employer be declined for workers' compensation coverage by the SCF and two private insurers, the employer may have coverage written by Arizona Assigned Risk Plan.

The SCF is also involved, along with the ICA, in handling claims for private insurance carriers that have become insolvent. Statute requires the SCF to use its resources to investigate, manage and pay valid Arizona claims of insolvent carriers and the SCF is then reimbursed by the Special Fund of the ICA for the amount the SCF has paid together with reasonable costs.

## RECENT LEGISLATION

As part of the changes made by the Legislature to reconcile the FY 2002-2003 state General Fund budget, the Legislature passed a bill that would have transferred \$50 million from the SCF to the state General Fund in exchange for a transfer of \$50 million worth of state assets under the jurisdiction of the Arizona Department of Administration to the SCF (Laws 2003, First Special Session, Chapter 2). The SCF resisted the transfer and filed suit against the state. In April of 2004, a Maricopa County Superior Court judge was, "...persuaded that the moneys and assets held by the State Compensation Fund are not public funds, but are funds held in trust by the Compensation Fund..." and ruled that the required transfer, "interferes with the contracted rights, responsibilities and expectations" of SCF policyholders and "would violate the Arizona Constitution." Therefore, the transfer and exchange never occurred.

In a 2005 Maricopa County Superior Court case, *Canyon Ambulatory Surgery Center v. Arizona State Compensation Fund*, in which the plaintiff asserted that it was only partly reimbursed for the facilities and services provided due to the SCF's adoption of a new pricing and reimbursement matrix in violation of the Arizona Administrative Procedure Act

(APA), the Court found that the SCF was "performing a general business function common to private [workers'] compensation carriers," as opposed to a "traditional administrative governmental function," and therefore, under the factual circumstances of the case, the SCF "is not subject to the [APA]." In 2007, the Legislature statutorily exempted the SCF from the APA.

Laws 2011, Chapter 157, conforms state statutes to reflect the termination of the SCF, in accordance with Laws 2010, Chapter 268, and replaces the SCF, upon its termination, with the insurer with the largest Arizona Workers' Compensation market share as reported by the Department of Insurance in its latest annual report as a member on the Workers' Compensation Appeals Board.

Upon the termination of the SCF, self-insured employers, including workers' compensation pools, will be required to pay a tax, on or before March 31 of each year, of not more than three per cent of the premiums that would have been paid if the employer or pool had been fully insured by an insurance carrier authorized to transact workers' compensation insurance in Arizona. The deviation rate for the purposes of calculating any tax or assessment to be paid is to be set at ten per cent for calendar years 2013, 2014 and 2015.

The ICA, upon the termination of the SCF, will be required to assign improperly processed or unpaid workers' compensation claims to the Special Fund and to ensure that the claims are processed and paid. The Special Fund will be permitted to use third party processors or other legal, medical, claims or labor market personnel to assist in the processing and payment of claims and to use monies for any expense or service that is necessary to ensure the payment of assigned claims. The Special Fund will be required to reimburse the Administrative Fund for all expenses incurred related to the processing and payment of assigned claims.

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## **ADDITIONAL RESOURCES:**

- Arizona State Compensation Fund  
3030 N. 3<sup>rd</sup> Street  
Phoenix, AZ 85012-3068  
602-631-2000  
[www.scfaz.com](http://www.scfaz.com)
- Industrial Commission of Arizona  
[www.ica.state.az.us](http://www.ica.state.az.us)
- Arizona Department of Insurance  
[www.id.state.az.us](http://www.id.state.az.us)
- Arizona State Compensation Fund Statutes:  
Arizona Revised Statutes, Title 23, Chapter  
6, Article 5
- Arizona Administrative Procedure Act  
Statutes: Arizona Revised Statutes, Title 41,  
Chapter 6
- “State Compensation Fund,” Office of the  
Auditor General, April 2009, Report No. 09-  
05
- Fact Sheet for S.B. 1102 (Laws 2011,  
Chapter 157) [www.azleg.gov](http://www.azleg.gov)