

Senate Engrossed House Bill

~~workers' compensation rates; deviation~~  
(now: workers' compensation; premiums)

State of Arizona  
House of Representatives  
Fifty-sixth Legislature  
Second Regular Session  
2024

**CHAPTER 139**  
**HOUSE BILL 2204**

AN ACT

AMENDING SECTIONS 23-902, 23-961 AND 23-1065, ARIZONA REVISED STATUTES;  
RELATING TO WORKERS' COMPENSATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

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

4 23-902. Employers subject to chapter; exceptions

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

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

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

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

1 completed written agreement that satisfies the requirements of this  
2 subsection is submitted to the carrier. The written agreement shall be  
3 dated and contain the signatures of both parties and, unless otherwise  
4 provided by law, shall state that the business:

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

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

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

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

17 5. Does not provide tools to the independent contractor.

18 6. Does not dictate the time of performance.

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

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

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

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

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

34 2. Obtained through coercion or duress.

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

37 Sec. 2. Section 23-961, Arizona Revised Statutes, is amended to  
38 read:

39 23-961. Methods of securing compensation by employers;  
40 deficit premium; civil penalty

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

43 1. By insuring and keeping insured the payment of such compensation  
44 with an insurance carrier authorized by the director of the department of

1 insurance and financial institutions to write workers' compensation  
2 insurance in this state.

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

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

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

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

33 1. The financial condition of the insurance carrier.

34 2. The insurance carrier's liabilities for workers' compensation  
35 loss and loss expenses in this state.

36 3. Whether the insurance carrier is subject to a finding of  
37 hazardous condition, an order of supervision, a delinquency proceeding or  
38 any other regulatory action in this state, the insurance carrier's state  
39 of domicile or any other state in which the insurance carrier transacted  
40 the business of insurance.

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

44 E. Except in the event of nonpayment of premiums, each insurance  
45 carrier shall carry a risk to the conclusion of the policy period unless

1 the policy is cancelled by the employer or unless one or both of the  
2 parties to a professional employer agreement terminate the agreement. The  
3 policy period shall be agreed on by the insurance carrier and the  
4 employer.

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

16 G. Every insurance carrier on or before March 1 of each year shall  
17 pay to the state treasurer for the credit of the administrative fund, in  
18 lieu of all other taxes on workers' compensation insurance, a tax of not  
19 more than three percent on all premiums collected or contracted for during  
20 the year ending December 31 next preceding, less the deductions from such  
21 total direct premiums for applicable cancellations, returned premiums and  
22 all policy dividends or refunds paid or credited to policyholders within  
23 this state and not reapplied as premiums for new, additional or extended  
24 insurance. Every self-insured employer, including workers' compensation  
25 pools, on or before March 31 of each year shall pay a tax of not more than  
26 three percent of the premiums that would have been paid by the employer if  
27 the employer had been fully insured by an insurance carrier authorized to  
28 transact workers' compensation insurance in this state during the  
29 preceding calendar year. The commission shall adopt rules that shall  
30 specify the premium plans and methods to be used for the calculation of  
31 rates and premiums and that shall be the basis for the taxes assessed to  
32 self-insured employers. The tax shall be not less than \$250 per annum and  
33 shall be computed and collected by the commission and paid to the state  
34 treasurer for the credit of the administrative fund at a rate not  
35 exceeding three percent to be fixed annually by the industrial commission  
36 of Arizona. The rate shall be no more than is necessary to cover the  
37 actual expenses of the industrial commission of Arizona in carrying out  
38 its powers and duties under this title. Any quarterly payments of tax  
39 pursuant to subsection ~~I~~ J of this section shall be deducted from the tax  
40 payable pursuant to this subsection.

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

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

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

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

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

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

10           1. THE INSURED EMPLOYER IS PART OF A MEMBERSHIP ORGANIZATION WHOSE  
11 MEMBERSHIP IS ALL OF THE FOLLOWING:

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

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

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

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

21           ~~I~~ J. Any insurer that, pursuant to this section, paid or is  
22 required to pay a tax of \$2,000 or more for the preceding calendar year  
23 shall file a quarterly report, in a form prescribed by the commission,  
24 accompanied by a payment in an amount equal to the tax due at the rates  
25 prescribed in subsection G of this section for premiums determined  
26 pursuant to subsection G of this section or an amount equal to twenty-five  
27 percent of the tax paid or required to be paid pursuant to subsection G of  
28 this section for the preceding calendar year. The quarterly payments  
29 shall be due and payable on or before the last day of the month following  
30 the close of the quarter and shall be made to the state treasurer.

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

34           ~~K~~ L. An insurer who fails to pay the tax prescribed by  
35 subsection G or ~~I~~ J of this section or the amount prescribed by section  
36 23-1065, subsection A is subject to a civil penalty equal to the greater  
37 of \$25 or five percent of the tax or amount due plus interest at the rate  
38 of one percent per month from the date the tax or amount was due.

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

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



1           1. The employer in whose employ the subsequent impairment occurred  
2 or its insurance carrier is solely responsible for all temporary  
3 disability compensation to which the employee is entitled and for an  
4 amount equal to the permanent disability compensation provided by section  
5 23-1044, subsection B for the subsequent impairment. If the employee is  
6 determined to have sustained no loss of earning capacity after the  
7 medically stationary date, the employer or carrier shall pay him as a  
8 vocational rehabilitation bonus the amount calculated under this paragraph  
9 as a lump sum, which shall be a credit against any permanent compensation  
10 benefits awarded in any subsequent proceeding. The amount of the  
11 vocational rehabilitation bonus for which the employer or carrier is  
12 responsible under this paragraph shall be calculated solely on physical,  
13 medically rated permanent impairment and not on occupational or other  
14 factors.

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

30           C. In claims involving an employee who has a preexisting physical  
31 impairment that is not industrially-related and, whether congenital or due  
32 to injury or disease, is of such seriousness as to constitute a hindrance  
33 or obstacle to employment or to obtaining reemployment if the employee  
34 becomes unemployed, and the impairment equals or exceeds a ten ~~per cent~~  
35 PERCENT permanent impairment evaluated in accordance with the American  
36 medical association guides to the evaluation of permanent impairment, and  
37 the employee thereafter suffers an additional permanent impairment not of  
38 the type specified in section 23-1044, subsection B, the claim involving  
39 the subsequent impairment is eligible for reimbursement, as provided by  
40 subsection D of this section, under the following conditions:

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



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

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

- 6           (a) Epilepsy.
- 7           (b) Diabetes.
- 8           (c) Cardiac disease.
- 9           (d) Arthritis.
- 10          (e) Amputated foot, leg, arm or hand.
- 11          (f) Loss of sight of one or both eyes or a partial loss of  
12 uncorrected vision of more than seventy-five ~~percent~~ PERCENT bilaterally.
- 13          (g) Residual disability from poliomyelitis.
- 14          (h) Cerebral palsy.
- 15          (i) Multiple sclerosis.
- 16          (j) Parkinson's disease.
- 17          (k) Cerebral vascular accident.
- 18          (l) Tuberculosis.
- 19          (m) Silicosis.
- 20          (n) Psychoneurotic disability following treatment in a recognized  
21 medical or mental institution.
- 22          (o) Hemophilia.
- 23          (p) Chronic osteomyelitis.
- 24          (q) Hyperinsulinism.
- 25          (r) Muscular dystrophies.
- 26          (s) Arteriosclerosis.
- 27          (t) Thrombophlebitis.
- 28          (u) Varicose veins.
- 29          (v) Heavy metal poisoning.
- 30          (w) Ionizing radiation injury.
- 31          (x) Compressed air sequelae.
- 32          (y) Ruptured intervertebral disk.

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

37           D. The employer or insurance carrier shall notify the commission of  
38 its intent to claim reimbursement for an eligible claim under subsection B  
39 or C of this section not later than the time the employer or insurance  
40 carrier notifies the commission pursuant to section 23-1047, subsection  
41 A. Upon receiving notice the commission may expend funds from the special  
42 fund created by this section for travel and discovery procedures and for  
43 the employment of such independent legal, medical, rehabilitation, claims  
44 or labor market consultants or experts as may be deemed necessary by the  
45 commission to assist in the determination of the liability of the special

1 fund, if any, under subsection B or C of this section. In the event there  
2 is any dispute regarding liability to the special fund pursuant to  
3 subsection B or C of this section, the commission shall not delay the  
4 issuance of a permanent award pursuant to section 23-1047, subsection B.

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

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

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

41 H. On receiving notice that the special fund may be liable under  
42 this chapter, the commission may spend monies from the special fund  
43 established by this section for expenses that are necessary to assist in  
44 the processing, payment or determination of liability of the fund. These  
45 expenses may include travel, discovery procedures and employing any legal,

1 medical, rehabilitation, claims or labor market consultant, examiner or  
2 expert.

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

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

29 K. There is established an investment committee consisting of the  
30 director and the chairman of the commission and three persons  
31 knowledgeable in investments and economics appointed by the governor. Of  
32 the members appointed by the governor, one shall be a professional in the  
33 investment business, one shall represent workers' compensation insurers  
34 and one shall represent self-insurers. The term of members appointed by  
35 the governor is three years, which shall begin on July 1 and end on June  
36 30 three years later. The committee shall prescribe by rule investment  
37 policies and supervise the investment activities of the special fund.

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

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

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

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

1           N. The investment committee shall periodically review and assess  
2 the investment strategy.  
3           O. The investment committee, by resolution, may invest and reinvest  
4 the surplus or reserves in the funds established under this chapter in any  
5 legal investments authorized under section 38-718.  
6           P. In addition to the investments authorized under section 38-718,  
7 the investment committee may approve the investment in real property and  
8 improvements on real property to house and maintain offices of the  
9 commission, including spaces for its departmental and operational  
10 facilities. Title to the real estate and improvements on the real estate  
11 vests in the special fund of the commission, and the assets become part of  
12 the fund as provided by this section.  
13           Q. The investment committee may appoint a custodian for the  
14 safekeeping of all or any portion of the investments owned by the special  
15 fund of the commission and may register stocks, bonds and other  
16 investments in the name of a nominee. Except for investments held by a  
17 custodian or in the name of a nominee, all securities purchased pursuant  
18 to subsection O of this section shall promptly be deposited with the state  
19 treasurer as custodian thereof, who shall collect the dividends, interest  
20 and principal thereof, and pay, when collected, into the special  
21 fund. The state treasurer shall pay all vouchers drawn for the purchase  
22 of securities. The director may sell any of the securities as the  
23 director deems appropriate, if authorized by resolution of the investment  
24 committee, and the proceeds therefrom shall be payable to the state  
25 treasurer for the account of the special fund upon delivery of the  
26 securities to the purchaser or the purchaser's agent.

APPROVED BY THE GOVERNOR APRIL 10, 2024.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 10, 2024.