

REAGAN FLOOR AMENDMENT

HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2087

(Reference to COMMERCE Committee amendment)

Page 1, between lines 1 and 2, insert:

"Section 1. Section 20-371, Arizona Revised Statutes, is amended to read:

20-371. Rate administration

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

B. In ~~promulgating~~ **ADOPTING** the rules and plans, the director shall give due consideration to the rating systems on file with the director, and, in order that the rules and plans may be as uniform as is practicable among the several states, to the rules and to the form of plans used for comparable rating systems in other states.

C. An insurer is not required to record or report its loss experience on a classification basis that is inconsistent with the uniform classification plan.

D. The director may designate an organization the director deems qualified, other than an insurer that has outstanding obligations under a policy of workers' compensation insurance in this state, to act as the director's statistical agent. The statistical agent shall assist the director in gathering and compiling workers' compensation experience and

1 performing other related services as the director may specify. The
2 compilations shall be made available subject to reasonable rules adopted by
3 the director, to insurers and rating organizations, but no insurer shall be
4 required to file its experience with an organization of which it is not a
5 member.

6 E. Every insurer shall report its loss and expense experience to the
7 rating organization of which it is a member. The rating organization shall
8 report the insurer's experience to the designated statistical agent. If the
9 rating organization is unable to report the experience of its member insurers
10 to the designated statistical agent, every insurer that is a member of the
11 rating organization shall directly report its experience to the designated
12 statistical agent. IF THE INSURER HAS ISSUED A MASTER POLICY, AS DEFINED IN
13 SECTION 23-561, THE INSURER SHALL SEPARATELY REPORT ITS PAYROLL
14 CLASSIFICATION AND LOSS EXPERIENCE FOR EACH CLIENT THAT IS COVERED UNDER THE
15 MASTER POLICY.

16 F. If there is more than one licensed rating organization that meets
17 the requirements of section 20-363, subsection E, the director shall
18 designate one of the organizations as the designated rating organization for
19 the purpose of annually making and filing with the director statewide
20 workers' compensation insurance rates that become effective on October 1.

21 G. The designated rating organization shall annually file its rate
22 filing with the director on or before August 1 for rates that become
23 effective on October 1. The director shall disapprove the filing if it does
24 not meet the standards of section 20-356, paragraph 1. An insurer
25 transacting workers' compensation insurance in this state shall adhere to the
26 expected loss ratios, ballast factors and other experience rating factors and
27 to the statewide rates and other rating values made by the designated rating
28 organization for the uniform rate filing, except that an insurer may deviate
29 from the statewide rate portion of the uniform rate filing according to
30 section 20-359, subsection A.

H. The director may allow the designated statistical agent and designated rating organization to charge licensed rating organizations that operate in this state a reasonable fee for their services. The licensed rating organizations shall pay the fees on a ratable basis.

I. To further the uniform administration of rate regulatory laws, the director and every insurer and rating organization may exchange information and experience data with insurance supervisory officials, insurers and rating organizations in other states and may consult with them with respect to rate making and the application of rating systems.

J. If more than one rating organization meets the requirements of section 20-363, subsection E, the director shall designate the statistical plan, classification plan or experience rating plan adopted by the designated rating organization or any other rating organization, or the plans of another state, as the uniform statistical plan, the uniform classification plan or the uniform experience rating plan.

K. If the director does not designate a uniform statistical plan, a uniform classification plan or a uniform experience rating plan pursuant to this section, each insurer shall adhere to the statistical plan, classification plan, and experience rating plan adopted by the rating organization of which the insurer is a member in this state."

Renumber to conform

Page 1, line 13, strike "A"

Between lines 14 and 15, insert:

"3. "CLIENT BASED POLICY" MEANS A STANDARD WORKERS' COMPENSATION POLICY THAT IS ISSUED TO THE CLIENT AND THAT COVERS ALL OF THE CLIENT'S EMPLOYEES, INCLUDING COVERED EMPLOYEES."

Renumber to conform

Page 2, line 3, after "and" insert "THAT"

Line 4, after "obligations" insert "THAT ARE"

Strike lines 20 through 23

Renumber to conform

Line 26, after "FOR" insert "COVERED EMPLOYEES AT"

Page 2, line 30, strike "OR ON BEHALF OF" insert "A PROFESSIONAL ORGANIZATION FOR"

Page 6, line 24, strike the comma insert a semicolon

Between lines 24 and 25, insert:

"A. IF A PROFESSIONAL EMPLOYER AGREEMENT DOES NOT PROVIDE FOR THE PROFESSIONAL EMPLOYER ORGANIZATION TO PURCHASE WORKERS' COMPENSATION FOR COVERED EMPLOYEES, THE CLIENT IS RESPONSIBLE TO PURCHASE A CLIENT BASED POLICY FOR ALL EMPLOYEES, INCLUDING THE COVERED EMPLOYEES."

Reletter to conform

Line 27, strike "POLICY" insert "FOR COVERED EMPLOYEES"

Between lines 30 and 31, insert:

"C. IF AN EMPLOYER IS PLACED IN THE ASSIGNED RISK PLAN UNDER SECTION 23-1091, THE EMPLOYER IS NOT ELIGIBLE FOR COVERAGE UNDER A MASTER POLICY."

Reletter to conform

Page 7, line 1, strike "THEN"

Strike lines 4 through 23, insert:

"1. PROVIDE TO EACH CLIENT A CERTIFICATE OF INSURANCE COVERAGE IN A FORM PRESCRIBED BY THE CARRIER.

2. NOTIFY THE CARRIER AND THE COMMISSION OF THE TERMINATION OR NONRENEWAL OF ANY PROFESSIONAL EMPLOYER AGREEMENT WITHIN TEN DAYS FOLLOWING THE TERMINATION OR NONRENEWAL.

3. ON REQUEST OF A CARRIER, MAINTAIN AND SUBMIT INDIVIDUAL CLIENT RECORDS TO THE CARRIER IN ORDER TO ASSIST THE CARRIER IN COMPLYING WITH SECTION 20-371, SUBSECTION E.

E. IF THE COMMISSION DETERMINES THAT A CLIENT THAT IS INSURED THROUGH A MASTER POLICY HAS BEEN THE SUBJECT OF TWO OR MORE CLAIMS FOR NO COVERAGE WITHIN THE PRECEDING TWENTY-FOUR MONTH PERIOD THAT ARE ELIGIBLE FOR PAYMENT FROM THE SPECIAL FUND ESTABLISHED BY SECTION 23-1065, THE CLIENT IS NOT ELIGIBLE TO BE COVERED BY A MASTER POLICY FOR A TWENTY-FOUR MONTH PERIOD FOLLOWING THE DETERMINATION DATE. ON WRITTEN OR ELECTRONIC NOTICE OF THE DETERMINATION AND DISQUALIFICATION BY THE COMMISSION TO THE PROFESSIONAL EMPLOYER ORGANIZATION, THE PROFESSIONAL EMPLOYER ORGANIZATION SHALL TERMINATE THE CLIENT'S COVERAGE WITHIN THIRTY DAYS UNDER THE MASTER POLICY AND

1 IMMEDIATELY NOTIFY THE CLIENT AND THE CARRIER THAT THE COVERAGE WAS
2 TERMINATED.

3 Sec. 5. Section 23-961, Arizona Revised Statutes, is amended to read:

4 23-961. Methods of securing compensation by employers; deficit
5 premium; civil penalty

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

8 1. By insuring and keeping insured the payment of such compensation
9 with the state compensation fund or an insurance carrier authorized by the
10 director of insurance to write workers' compensation insurance in this state.

11 2. By furnishing to the commission satisfactory proof of financial
12 ability to pay the compensation directly or through a workers' compensation
13 pool approved by the commission in the amount and manner and when due as
14 provided in this chapter. The requirements of this paragraph may be
15 satisfied by furnishing to the commission satisfactory proof that the
16 employer is a member of a workers' compensation pool approved by the
17 commission pursuant to section 23-961.01. The commission may require a
18 deposit or any other security from the employer for the payment of
19 compensation liabilities in an amount fixed by the commission, but not less
20 than one hundred thousand dollars for workers' compensation liabilities. If
21 the employer does not fully comply with the provisions of this chapter
22 relating to the payment of compensation, the commission may revoke the
23 authority of the employer to pay compensation directly.

24 B. An employer may not secure compensation to comply with this chapter
25 by any mechanism other than as provided in this section. No insurance,
26 combination or other program may be marketed, offered or sold as workers'
27 compensation that does not comply with this section. An employer violates
28 this chapter if the employer purchases or secures its obligations under this
29 chapter through a substitute for workers' compensation that does not comply
30 with this section.

1 C. Insurance carriers that transact the business of workers'
2 compensation insurance in this state shall be subject to the rules of the
3 director of insurance.

4 D. The director of insurance shall not issue to an insurance carrier a
5 certificate of authority that authorizes the insurance carrier to transact
6 workers' compensation insurance until the insurer deposits with the state
7 treasurer, through the director of insurance, cash or securities. The state
8 compensation fund shall also deposit cash or securities with the state
9 treasurer, through the director of insurance, before transacting the business
10 of workers' compensation insurance. The amount of cash or securities
11 required under this subsection shall be at least equal to the greater of the
12 following amounts:

13 1. One hundred thousand dollars.

14 2. The sum of subdivisions (a) and (b) of this paragraph less credits
15 for approved reinsurance computed as of the preceding December 31 or other
16 time as requested by the department of insurance for workers' compensation
17 insurance written subject to the laws of this state:

18 (a) The aggregate of the present values at six per cent interest of
19 all determined and estimated future direct reported loss and loss expense
20 payments on compensation claims incurred more than three years immediately
21 before the preceding December 31 or other time as requested by the department
22 of insurance.

23 (b) The aggregate of the amounts determined for each of the three
24 years immediately before the preceding December 31 or other time as requested
25 by the department of insurance which equals the greater of the following:

26 (i) Sixty-five per cent of the earned premiums for the year less all
27 direct reported loss and loss expense payments made on compensation claims
28 incurred in the corresponding year.

29 (ii) The present value at six per cent interest of all determined and
30 estimated future direct reported loss and loss expense payments on
31 compensation claims incurred in that year.

1 E. On or before April 15 and on any date that the department of
2 insurance specifically requests, an insurance carrier shall file with the
3 department of insurance the information necessary to compute the required
4 amount to be deposited pursuant to subsection D of this section and shall
5 deposit any required additional amount.

6 F. An insurance carrier shall maintain at all times a deposit of cash
7 or securities with the state treasurer, through the director of insurance, in
8 an amount that is not less than the amount required under this section.

9 G. Cash or securities deposited pursuant to this section are subject
10 to approval by the director of insurance at all times. The director of
11 insurance shall hold the cash or securities for fulfillment of the
12 obligations of the insurance carrier, including an insurance carrier acting
13 as a reinsurer, under this chapter. The commission shall have a lien against
14 the cash or securities deposited to the extent the special fund is liable to
15 pay the obligations secured by the cash or securities.

16 H. Except in the event of nonpayment of premiums, each insurance
17 carrier shall carry a risk to the conclusion of the policy period unless the
18 policy is cancelled by the employer or unless one or both of the parties to a
19 professional employer agreement terminate the agreement. The policy period
20 shall be agreed upon by the insurance carrier and the employer.

21 I. At least thirty days' notice shall be given by the insurance
22 carrier to the employer and to the commission of any cancellation or
23 nonrenewal of a policy if the cancellation or nonrenewal is at the election
24 of the insurance carrier. The insurance carrier shall promptly notify the
25 commission of any cancellation by the employer or failure of the employer to
26 renew the policy. The failure to give notice of nonrenewal if the nonrenewal
27 is at the election of the insurance carrier shall not extend coverage beyond
28 the policy period. An insurance carrier shall notify the commission on a
29 form prescribed by the commission that it has insured an employer for
30 workers' compensation promptly after undertaking to insure the employer. IF
31 THE INSURANCE CARRIER PROVIDES COVERAGE UNDER A MASTER POLICY OR MULTIPLE
32 COORDINATED POLICIES, AS DEFINED IN SECTION 23-561, THE INSURANCE CARRIER

1 SHALL SEND ANY NOTICE OF CANCELLATION OR NONRENEWAL OF THE MASTER POLICY OR
2 MULTIPLE COORDINATED POLICIES TO THE PROFESSIONAL EMPLOYMENT ORGANIZATION AND
3 EACH CLIENT OF A PROFESSIONAL EMPLOYER ORGANIZATION THAT IS INSURED UNDER THE
4 MASTER POLICY OR MULTIPLE COORDINATED POLICIES.

5 J. Every insurance carrier, including the state compensation fund, on
6 or before March 1 of each year shall pay to the state treasurer for the
7 credit of the administrative fund, in lieu of all other taxes on workers'
8 compensation insurance, a tax of not more than three per cent on all premiums
9 collected or contracted for during the year ending December 31 next
10 preceding, less the deductions from such total direct premiums for applicable
11 cancellations, returned premiums and all policy dividends or refunds paid or
12 credited to policyholders within this state and not reapplied as premiums for
13 new, additional or extended insurance. Every self-insured employer,
14 including workers' compensation pools, on or before March 31 of each year
15 shall pay a tax of not more than three per cent of the premiums which would
16 have been paid by the employer if the employer had been fully insured under a
17 plan available from the state compensation fund during the preceding calendar
18 year. The commission shall adopt rules that shall specify those methods to
19 be used for the calculation of rates and premiums and that shall be the basis
20 for the taxes assessed to self-insured employers. The tax shall be not less
21 than two hundred fifty dollars per annum and shall be computed and collected
22 by the commission and paid to the state treasurer for the credit of the
23 administrative fund at a rate not exceeding three per cent to be fixed
24 annually by the industrial commission. The rate shall be no more than is
25 necessary to cover the actual expenses of the industrial commission in
26 carrying out its powers and duties under this title. Any quarterly payments
27 of tax pursuant to subsection L of this section shall be deducted from the
28 tax payable pursuant to this subsection.

29 K. An insurance carrier may reduce the amount of premiums paid by an
30 employer by up to five per cent if all of the following apply:

31 1. The insured employer complies with the drug testing policy
32 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 the
4 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 L. Any insurer which, pursuant to this section, paid or is required to
9 pay a tax of two thousand dollars or more for the preceding calendar year
10 shall file a quarterly report, in a form prescribed by the commission,
11 accompanied by a payment in an amount equal to the tax due at the rates
12 prescribed in subsection J of this section for premiums determined pursuant
13 to subsection J of this section or an amount equal to twenty-five per cent of
14 the tax paid or required to be paid pursuant to subsection J of this section
15 for the preceding calendar year. The quarterly payments shall be due and
16 payable on or before the last day of the month following the close of the
17 quarter and shall be made to the state treasurer.

18 M. If an overpayment of taxes results from the method prescribed in
19 subsection L of this section, the industrial commission may refund the
20 overpayment without interest.

21 N. An insurer who fails to pay the tax prescribed by subsection J or L
22 of this section or the amount prescribed by section 23-1065, subsection A is
23 subject to a civil penalty equal to the greater of twenty-five dollars or
24 five per cent of the tax or amount due plus interest at the rate of one per
25 cent per month from the date the tax or amount was due.

26 O. Neither the state compensation fund nor an insurance carrier
27 authorized to write workers' compensation insurance may assess an employer
28 premiums for services provided by a contractor alleged to be an employee
29 under section 23-902, subsection B or C, unless the fund or carrier has done
30 both of the following:

1 1. Prepared written audit or field investigation findings establishing
2 that all applicable factors for determining employment status under section
3 23-902 have been met.

4 2. Provided a copy of such findings to the employer in advance of
5 assessing a premium.

6 P. Notwithstanding section 23-901, paragraph 6, subdivision (i), a
7 sole proprietor may waive the sole proprietor's rights to workers'
8 compensation coverage and benefits if both the sole proprietor and the
9 insurance carrier of the employer subject to this chapter for which the sole
10 proprietor performs services sign and date a waiver which is substantially in
11 the following form:

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

20 _____
21 Sole proprietor

_____ Date

22 _____
23 Insurance carrier

_____ Date"

24 Amend title to conform

MICHELE REAGAN

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