

REORGANIZATION OF THE INDUSTRIAL COMMISSION

JOHN C. KING*

On July 7, 1967, the Arizona Industrial Commission¹ announced a rate increase, which ranged from thirty to eighty-five percent, for all employers except self-insurers. This increase, effective July 1, 1967, caused an average fifty percent boost in workmen's compensation costs for ninety percent of Arizona employers. The commission considered the rate increase necessary to eliminate a deficit in the reserve for unpaid claims of eight million dollars and to keep the fund solvent in the future.

On July 14, 1967, the Governor appointed a special investigating committee to determine the reasons for the rate increase. As a result of information obtained by the committee and reports submitted to the legislature by the consulting firms of Peat, Marwick, Mitchell & Co. and Arthur Stedry Hansen Consulting Actuaries, Inc., both the house and senate introduced bills during the regular session of the 1968 legislature to reorganize the commission. However, the legislative leaders decided that not enough time remained in the regular session to hear all the interested parties and to properly draft and enact an acceptable bill. Thus, neither bill was passed by both houses.

Subsequently, the Governor called a special session of the twenty-eighth legislature to reorganize the commission. Prior to the beginning of the session, extensive public hearings were held to determine the viewpoints of various interest groups, including organized labor, contractors, the insurance industry and self-raters.

Thereafter, a joint committee of the house and senate drafted a bill which was introduced at the beginning of the session as house bill 1. This bill, as amended by both the house and senate, was passed on June 8, 1968, signed by the Governor on June 12, and will become effective on January 1, 1969. Claims for injuries occurring prior to

* Associate, Shimmel, Hill, Kleindienst & Bishop, Phoenix, Arizona. A.B. 1959, West Virginia University; L.L.B. 1962, Harvard University. (Member, State Bars of Arizona and California). Mr. King served as legal counsel to the House Majority Leader, and in that capacity was counsel to the joint Senate-House Committee which drafted the Industrial Commission Bill.

The author wishes to express his appreciation and gratitude to Robert K. Park, General Counsel for the Industrial Commission, and Robert D. Steckner, Chief Council of the Industrial Commission, for reviewing the article and providing valuable suggestions. (The opinions expressed herein are those of the author and do not necessarily represent the views of any employee of the Industrial Commission or any member of the legislature.)

¹ Hereinafter referred to as the commission.

January 1, 1969, will be processed in accordance with the procedure and benefit levels in effect prior to the effective date of the Act, but petitions to reopen will be processed in accordance with the procedural provisions of the new law.² Most of the recommendations of the consultants were followed, and the Act accomplished its basic purpose of reforming the organizational structure and functions of the Industrial Commission.

THE COMMISSION UNDER PRE-EXISTING LAW

Prior to the enactment of the reorganization bill, the commission operated a state insurance company, made initial compensation awards, adjudicated contested claims, and regulated private insurance carriers writing workmen's compensation insurance. Placing all these functions under one state agency resulted in several conflicts of interest.

In running the state insurance company, the commission was concerned with keeping rates low for the benefit of its policyholders; yet, when adjudicating contested claims, the sole function of the commission should have been to make fair and impartial awards. This dual role of the commission placed its members in an anomolous situation, and it is difficult to imagine how they could possibly make impartial awards while striing to maintain low premium rates.

The commission not only ran the state insurance company, it also regulated all private insurance companies writing workmen's compensation insurance. This required the managers of the state insurance company, *i.e.*, the industrial commissioners, to regulate their competitors. As a result, the commission adopted a regulation requiring all private insurance companies to charge a rate approximately eleven percent higher than that charged by the state insurance company. Consequently, private insurance companies were writing less than ten percent of the workmen's compensation insurance in Arizona.³

THE REORGANIZED STRUCTURE

To eliminate these conflicting interests, the new Act creates a separate State Compensation Fund (sometimes referred to as the State

² ARIZ. REV. STAT. ANN. § 23-1270 (Law of June 8, 1968, ch. 6, House Bill 1, 28th Legis., 4th Spec. Sess.) [hereinafter cited by reference to ARIZ. REV. STAT. ANN.]. At the time of publication of this issue, the Act had not been compiled into session laws or printed in ARIZ. REV. STAT. ANN. The Act will appear in the 1968 Supplement to ARIZ. REV. STAT. ANN., and is presently available only in a special pamphlet compiled and issued by Wesley Bolin, Secretary of State, Phoenix, Arizona.

³ On March 11, 1968, before the Industrial Commission bill was passed, the court of appeals held, in *Industrial Comm'n v. Harbor Ins. Co.*, 7 Ariz. App. 254, 438 P.2d 323 (1968) that the commission did not have the authority to set different rates for itself than those set for private carriers. The supreme court has accepted review of this decision. Under the new Act, the Insurance Department is given the authority to establish different rates for the State Fund and private insurance companies. ARIZ. REV. STAT. ANN. § 20-359 (Supp. 1968).

Fund) and abrogates the authority of the commission to regulate private carriers and workmen's compensation insurance rates. The State Compensation Fund will operate as a state insurance company; the Insurance Department will regulate rates and private carriers; and the commission will continue to adjudicate contested claims and administer the workmen's compensation laws.

THE STATE COMPENSATION FUND

The legislature has attempted to put the State Compensation Fund and private carriers on an equal and competitive basis. The Fund will be a separate and distinct entity, supervised by a three-man board of directors appointed by the Governor for staggered three-year terms.⁴ The day-to-day operations will be administered by a manager appointed by the board for a five-year term at a salary to be fixed by the board, with the board reserving the right to remove for cause.⁵ The manager must have proven competence as an insurance executive at the general management level;⁶ to assure that the board could have such an experienced and competent manager, no limitation was placed on his salary.

To increase efficiency and reduce costs, the Compensation Fund, Accident Benefit Fund and Occupational Disease Compensation Fund were combined into the State Compensation Fund.⁷ This allows the surplus of approximately \$2,500,000 in the Occupational Disease Fund to be used to reduce the deficit in the State Compensation Fund.

The investment authority and investment procedures of the State Fund also were broadened in order to increase its rate of return and allow it to effectively compete with private carriers. Under prior law, the State Compensation Fund could invest only in bonds and state warrants, but under the new Act, the State Fund has authority to invest any surplus in those investments authorized under the Arizona State Retirement System.⁸ This will allow the State Fund to invest in preferred stocks, common stocks, certificates of deposit, mortgages and many other types of securities.⁹

The new Act also creates an investment committee of five members: the manager of the State Fund, the chairman of the board of directors

⁴ Each member of the board must be a policyholder or an employee of a policyholder of the State Fund. ARIZ. REV. STAT. ANN. § 23-981.01(A) (Supp. 1968). Each member will receive \$50 per day while in actual attendance at meetings of the board and is reimbursed for travel expenses incurred while traveling from his home to meetings or to where he discharges his duties. ARIZ. REV. STAT. ANN. § 23-981.01(C) (Supp. 1968). From among the members, the Governor will annually appoint a chairman. ARIZ. REV. STAT. ANN. § 23-981.01(D) (Supp. 1968).

⁵ ARIZ. REV. STAT. ANN. § 23-981.01(E) (Supp. 1968).

⁶ *Id.*

⁷ ARIZ. REV. STAT. ANN. § 23-901(9) (Supp. 1968); ARIZ. REV. STAT. ANN. § 23-981(A) (Supp. 1968).

⁸ ARIZ. REV. STAT. ANN. § 23-985(F) (Supp. 1968).

⁹ ARIZ. REV. STAT. ANN. § 38-757 (Supp. 1967).

of the State Fund, and three members knowledgeable in investments and economics who are to be appointed by the Governor for staggered three-year terms.¹⁰ The committee will establish and supervise the investment policies and activities of the State Fund.¹¹ It will employ a director of investments for the day-to-day administration of the committee's activities¹² and an independent investment counsel who will report to the investment committee at least once a month on investment results.¹³

The Act further provides that the State Fund must be audited at least once each year by an independent firm of certified public accountants, and that the audit report be available to the public for inspection.¹⁴

THE INSURANCE DEPARTMENT

The Insurance Department has been given the authority to regulate workmen's compensation insurance, and to establish the rates charged by all insurance companies writing workmen's compensation policies, including the State Fund.¹⁵ The rates initially will be set by rating organizations, to one of which, all insurance companies writing workmen's compensation insurance, including the State Fund, must subscribe.¹⁶ A rating organization is required to have as members at least five insurance companies who are authorized to write workmen's compensation insurance in Arizona and whose overall experience is determined by the director of insurance to be reasonably adequate for rate-making purposes.¹⁷ Self-rating plans of the State Compensation Fund, however, are exempt from the rules, regulations and rating plans of a rating organization, and self-raters will continue to have their rates fixed by the State Compensation Fund.¹⁸

Any insurance company that wishes to deviate from the set rate may file a request with the director of insurance. At the same time, a copy of the request must be forwarded to the rating organization which

¹⁰ ARIZ. REV. STAT. ANN. §§ 23-985(A),(B) (Supp. 1968). Each member, other than the manager of the State Fund, will receive \$50 per day while in actual attendance at meetings of the committee and will also be reimbursed for travel expenses. ARIZ. REV. STAT. ANN. § 23-985(C) (Supp. 1968).

¹¹ ARIZ. REV. STAT. ANN. § 23-985(A) (Supp. 1968). It must meet at least once every two weeks. ARIZ. REV. STAT. ANN. § 23-985(D) (Supp. 1968).

¹² ARIZ. REV. STAT. ANN. § 23-985(D) (Supp. 1968).

¹³ ARIZ. REV. STAT. ANN. § 23-985(E) (Supp. 1968).

¹⁴ ARIZ. REV. STAT. ANN. § 23-982(C) (Supp. 1968). A copy of the audit will be filed with the Secretary of State, the Insurance Department and the Auditor General.

¹⁵ ARIZ. REV. STAT. ANN. §§ 23-961(B), 20-342 (Supp. 1968).

¹⁶ ARIZ. REV. STAT. ANN. § 20-363(E) (Supp. 1968).

¹⁷ ARIZ. REV. STAT. ANN. § 20-363(F) (Supp. 1968). The State Compensation Fund is entitled to membership on any committee established by the rating organization, and one-half of the members of each such committee must be chosen by stock insurance companies and one-half by non-stock companies. ARIZ. REV. STAT. ANN. § 20-363(G) (Supp. 1968). The State Compensation Fund is considered a non-stock insurance company.

¹⁸ ARIZ. REV. STAT. ANN. § 20-363(H) (Supp. 1968).

will render its own opinion.¹⁹ If the deviation is approved by the insurance director but disagreed with by the rating organization, the director must notify the commission of the disagreement within ten days after receiving the opinion of the rating organization.²⁰

In order that a high risk employer may obtain workmen's compensation insurance,²¹ and that all insurance companies, including the State Fund, will share such risks equally, an assigned risk pool has been established.²² If an employer has been refused coverage by the State Fund and two or more private insurance carriers, he will be placed in the pool.²³ All insurance carriers, including the State Fund, must join in the pool,²⁴ and their participation is based on their proportionate share of the workmen's and occupational disease compensation insurance written in Arizona.²⁵ Any company which refuses to participate will no longer be authorized to write workmen's compensation insurance in Arizona.²⁶

THE INDUSTRIAL COMMISSION

The composition and duties of the Industrial Commission have been substantially altered under the new Act. The terms of the three members presently serving on the commission will terminate on January 8, 1969,²⁷ and in lieu of appointing three full-time commissioners at \$12,000 a year, the Governor will appoint five part-time commissioners for staggered terms of five years,²⁸ with each commissioner to receive

¹⁹ ARIZ. REV. STAT. ANN. § 20-359(A) (Supp. 1968).

²⁰ ARIZ. REV. STAT. ANN. § 20-359(C) (Supp. 1968). This section was inserted so that insurance companies, or anyone else, could easily determine if the Director of Insurance is favoring certain companies.

Although, in theory, each rating organization may set its own rate, and individual companies may deviate from each rate, it is expected that, in practice, there will be compliance with the rates set by the National Council on Compensation Insurance (which is the only national workman's compensation rating organization). The legislature could not have created a "closed class" by specifying adherence to only the rates set by the National Council because this would have worked a discrimination against other organizations setting rates and denied them the equal protection of the law. See *Morey v. Doud*, 354 U.S. 457 (1957).

²¹ In *Employer's Liab. Assur. Corp. v. Frost*, 48 Ariz. 402, 62 P.2d 320 (1936), the court held that the statute requiring all private insurance carriers writing workmen's compensation insurance in Arizona to accept all risks was unconstitutional. In *Gene Autry Prod. v. Industrial Comm'n*, 67 Ariz. 290, 195 P.2d 143 (1948), the court held that the commission, in managing the State Fund, could refuse to issue a policy of insurance if it determined that to do so would in all reasonable probability result in the insolvency of the fund. The *Frost* case was questioned in *California State Auto. Ass'n Inter-Ins. Bureau v. Downey*, 96 Cal. App. 2d 876, 216 P.2d 882 (1950), *aff'd*, 314 U.S. 105 (1951) (upholding California's assigned risk plan). See generally 2 LARSON, WORKMEN'S COMPENSATION LAW §§ 92.50 to .53 (1966).

²² ARIZ. REV. STAT. ANN. § 23-1091 (Supp. 1968).

²³ ARIZ. REV. STAT. ANN. § 23-1091(A) (Supp. 1968).

²⁴ *Id.*

²⁵ ARIZ. REV. STAT. ANN. § 23-1091(B) (Supp. 1968).

²⁶ ARIZ. REV. STAT. ANN. § 23-1091(C) (Supp. 1968).

²⁷ ARIZ. REV. STAT. ANN. § 23-101(B) (Supp. 1968).

²⁸ *Id.* The chairman of the commission will be appointed by and serve at the pleasure of the Governor.

\$50 for each day he performs his duties.²⁹ No more than three members may belong to the same political party, and each member must have been a resident of Arizona for five years immediately preceding his original appointment.³⁰ A member may be removed for inefficiency, neglect of duty, malfeasance, misfeasance or nonfeasance in office.³¹

The commissioners will have substantially the same authority and responsibility as under existing law except, as previously noted they will no longer run the state insurance company nor regulate any company writing workmen's compensation insurance.³² Further, the commissioners will act as an appellate board for the decisions of a hearing officer,³³ and will be responsible for establishing and enforcing safety standards.³⁴

Responsibility for daily operation of the commission is delegated to a director, who in turn has the authority to employ the necessary personnel to accomplish his objectives.³⁵

ADMINISTRATIVE FUND

Under existing law, there is a two percent premium tax imposed on all self-insurers and all private carriers writing workmen's compensation insurance. The money raised by this tax is used to defray the expenses of the Industrial Commission in processing claims. This procedure has not changed, except that the tax will also be imposed on the State Compensation Fund, and the combined proceeds paid into a separate fund, designated the Administrative Fund.³⁶

The Administrative Fund will be used to pay the salaries of the

²⁹ ARIZ. REV. STAT. ANN. § 23-101(C) (Supp. 1968).

³⁰ ARIZ. REV. STAT. ANN. § 23-101(B) (Supp. 1968). One of the major issues considered was the composition of the commission. House bill 1 as originally introduced in the special session, provided for a representative of the insurance industry, an industrial relations manager, a labor representative, a safety engineer and an attorney. The house originally passed the bill with these provisions, except it provided for an employer of no more than twenty-five nor less than three employees instead of an attorney. The senate amended the bill by deleting all specific qualifications except the five-year residency requirement. The final version adopted the senate amendment so that the Governor would not be restricted in his appointments. Thus, the public's interest, and not just the interests of certain groups, will be represented.

³¹ ARIZ. REV. STAT. ANN. § 23-101(D) (Supp. 1968).

³² See ARIZ. REV. STAT. ANN. § 23-107 (Supp. 1968) (setting forth the general powers of the commission).

³³ ARIZ. REV. STAT. ANN. § 23-943 (Supp. 1968). See pp. 381-82 *infra*.

³⁴ ARIZ. REV. STAT. ANN. § 23-402 (Supp. 1968). See pp. 383-86 *infra*.

³⁵ ARIZ. REV. STAT. ANN. § 23-108(A) (Supp. 1968).

³⁶ ARIZ. REV. STAT. ANN. § 23-961(G) (Supp. 1968). Private carriers and self-insurers will continue to pay the existing two percent tax to the State Compensation Fund during 1969, to be used for processing 1968 claims. ARIZ. REV. STAT. ANN. § 23-961(H) (Supp. 1968). In 1970 they will begin paying this tax to the Administrative Fund. The payments must be made on or before March 31, 1970, and will be based on 1969 premiums. ARIZ. REV. STAT. ANN. § 23-961(G) (Supp. 1968). The State Compensation Fund will begin its payments in 1969. ARIZ. REV. STAT. ANN. § 23-961(H) (Supp. 1968).

commissioners³⁷ and the director,³⁸ as well as any necessary expenses incurred by the commission in operating the Safety Division.³⁹ These expenditures are subject to budgetary review and legislative approval, as are expenditures from any state fund,⁴⁰ and if there is sufficient justification, the Governor may authorize expenditures from the fund in excess of the amounts authorized by the legislature.⁴¹ The Administrative Fund is to be self-supporting, and any amounts remaining after the expenses of the commission have been paid are to be transferred annually to the Special Fund.⁴²

SPECIAL FUND

The Special Fund will be administered as part of the Administrative Fund and will receive money from two sources. First, when an injury results in death, and the employee has no dependents, his insurance carrier must pay \$1,150 to the state treasury for the benefit of the Special Fund.⁴³ Second, the current one percent tax on all premiums received by the Compensation Fund will be increased to two percent and, in addition, will be imposed on private insurance carriers and self-insurers.⁴⁴

The Special Fund will continue to provide indemnification for second injuries and vocational rehabilitation;⁴⁵ however, it also will be used to provide benefits for employees whose employer does not have workmen's compensation insurance.⁴⁶

The predicament of the uninsured employee was one of the most troublesome problems confronting the legislature. If the employer carried workmen's compensation insurance, but the insurance company refused or was unable to pay benefits under the policy, the employee was paid by the State Compensation Fund.⁴⁷ However, if the employer did not carry insurance, the injured employee could only sue his employer for negligence, or obtain an award from the commission which would be a lien against his employer.⁴⁸ According to the testimony of various persons at the hearings, these remedies were of little value since the employer usually was judgment proof or had left the state. The new Act has added two additional provisions in an effort to remedy

³⁷ ARIZ. REV. STAT. ANN. § 23-102 (Supp. 1968). Under existing law, the salaries of the commissioners are paid by the state.

³⁸ ARIZ. REV. STAT. ANN. § 23-108(C) (Supp. 1968).

³⁹ ARIZ. REV. STAT. ANN. § 23-1081(A) (Supp. 1968).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² ARIZ. REV. STAT. ANN. § 23-1081(B) (Supp. 1968).

⁴³ ARIZ. REV. STAT. ANN. § 23-1065(A) (Supp. 1968).

⁴⁴ *Id.*

⁴⁵ ARIZ. REV. STAT. ANN. § 23-1065(A) (Supp. 1968).

⁴⁶ ARIZ. REV. STAT. ANN. § 23-907(B) (Supp. 1968).

⁴⁷ ARIZ. REV. STAT. ANN. § 23-966 (1956).

⁴⁸ These remedies are retained. ARIZ. REV. STAT. ANN. §§ 23-907(A)(B)(C) (Supp. 1968).

this situation. If an employer required to obtain workmen's compensation insurance fails to do so, the commission may apply to the court for an injunction enjoining operation of his business until compliance with the workmen's compensation law is obtained.⁴⁹ Also, an uninsured employee who has been injured may file, in lieu of a civil action, an application with the commission for compensation. The employer then has ten days after receiving notice of the amount of compensation due to pay such amount to the employee. If such compensation is not paid within ten days, the commission may order the award paid out of the Special Fund.⁵⁰ If the claim is paid from the Special Fund, the cause of action against the employer is assigned to the commission for the benefit of the Special Fund.⁵¹

PROCESSING A CLAIM

Under the present system, all claims for compensation are filed with and processed by the commission. Under the new Act, only claims for disability or death from an occupational disease will be processed by the commission in the same manner as under existing law; claims for medical, surgical and hospital benefits (formerly called accident benefits) and workmen's compensation will be processed by the insurance companies, including the State Fund.⁵² Although payments for medical benefits and compensation for temporary disability and scheduled permanent disability will be made without the entry of an award by the commission,⁵³ all claims for compensation still must be filed with the commission within one year after the injury occurred or the right to compensation accrued.⁵⁴ If the claim is not filed within a year, it will be barred unless the insurance carrier or employer has begun payments for partial or total disability.⁵⁵ However, the running of the statute of limitations must be raised by the commission at the first hearing on a claim or it is waived.⁵⁶ The injured employee also must promptly report the accident and injury to his employer.⁵⁷ Further, any physician em-

⁴⁹ ARIZ. REV. STAT. ANN. § 23-907(D) (Supp. 1968).

⁵⁰ ARIZ. REV. STAT. ANN. § 23-907(B) (Supp. 1968). Clearly, the employee does not have a *right* to obtain payment from the Special Fund because the legislature specified that the commission would have complete discretion whether or not to pay the compensation.

⁵¹ *Id.*

⁵² ARIZ. REV. STAT. ANN. § 23-1061(G) (Supp. 1968).

⁵³ ARIZ. REV. STAT. ANN. § 23-1047(A) (Supp. 1968).

⁵⁴ ARIZ. REV. STAT. ANN. § 23-1061(A) (Supp. 1968). The right to compensation accrues under the new bill, as under existing law, when the injury becomes manifest. *Williams v. Industrial Comm'n*, 3 Ariz. App. 403, 415 P.2d 118 (1966); *Hughes v. Industrial Comm'n*, 81 Ariz. 264, 304 P.2d 1066 (1956).

⁵⁵ ARIZ. REV. STAT. ANN. § 23-1061(B) (Supp. 1968).

⁵⁶ ARIZ. REV. STAT. ANN. § 23-1061(D) (Supp. 1968).

⁵⁷ ARIZ. REV. STAT. ANN. § 23-908(D) (Supp. 1968). For failure to do so, he is guilty of a misdemeanor punishable by a fine of not less than \$50 nor more than \$200. ARIZ. REV. STAT. ANN. § 23-908(H) (Supp. 1968).

ployed by the injured employee must report the accident and injury to the employer, the insurance company and the commission.⁵⁸

Elaborate provisions have been enacted to insure that all interested parties receive notice of the injury. After receiving notice, the commission must apprise the employer;⁵⁹ upon receiving notice from his employee or the commission, the employer must immediately provide his employee with the name and address of the insurance carrier and the policy number and expiration date.⁶⁰ The employer also must inform his insurance carrier of the accident within ten days,⁶¹ and the insurance company must begin compensation payments within fourteen days after it receives notice, unless it denies the right to compensation. Compensation must be paid at least once every two weeks during the period of temporary total disability and at least monthly thereafter.⁶²

The employer's insurance carrier is to determine the amount of compensation for permanent disability if the injury is scheduled,⁶³ but only the commission may determine the amount of permanent disability compensation if the injury is not scheduled.⁶⁴ Sections 20-1044 to -1046 of Arizona Revised Statutes Annotated provide a schedule of compensation for certain specified injuries,⁶⁵ and injuries not included therein are considered non-scheduled. When a non-scheduled injury becomes stationary,⁶⁶ in the case of permanent partial disability, or when death results and the dependents are not enumerated by statute, or in the case of a non-scheduled injury resulting in permanent total disability, the insurance company must notify the commission and request that it determine the amount, if any, of permanent compensation to be paid.⁶⁷ Copies of the medical reports also must be furnished.⁶⁸ The commission

⁵⁸ ARIZ. REV. STAT. ANN. § 23-908(D) (Supp. 1968). For failing to do so, the physician also is guilty of a misdemeanor. ARIZ. REV. STAT. ANN. § 23-908(H) (Supp. 1968).

⁵⁹ ARIZ. REV. STAT. ANN. § 23-1061(A) (Supp. 1968).

⁶⁰ ARIZ. REV. STAT. ANN. § 23-908(G) (Supp. 1968). Under existing law, doctors and druggists forward all bills to the commission. Under the new law, bills will be sent to the appropriate insurance carrier. This section enables the employee to provide the name of his insurance carrier to the doctor or druggist.

⁶¹ ARIZ. REV. STAT. ANN. §§ 23-1061(E), 23-908(F) (Supp. 1968). If the employer receives notice of the accident from his employee, he must inform the commission within ten days; 23-1061(E) also literally requires notice to the commission after the employer is informed of the accident by the commission. Furthermore, the insurance carrier must notify the commission of the accident after it has been informed by the employer, even though the employer has already informed the commission under § 23-1061(F), and even though the commission may have originally informed the employer! See § 23-908(F).

⁶² ARIZ. REV. STAT. ANN. § 23-1062(B) (Supp. 1968).

⁶³ ARIZ. REV. STAT. ANN. § 23-1061(G) (Supp. 1968).

⁶⁴ ARIZ. REV. STAT. ANN. § 23-1047 (Supp. 1968).

⁶⁵ E.g., the loss of a thumb or foot.

⁶⁶ An injury becomes stationary when the physical condition of a claimant has progressed to a point where, in all reasonable probability the condition will neither improve nor deteriorate.

⁶⁷ ARIZ. REV. STAT. ANN. § 23-1047(A) (Supp. 1968).

⁶⁸ *Id.*

must examine the claim and make its determination within 30 days after it receives the medical reports unless it requires additional information, in which case it may postpone its determination for not more than sixty additional days.⁶⁹ If the claimant, insurance company, or employer, disagrees with the commission's determination, a hearing may be requested within sixty days after copies of the determination are mailed to all interested parties.⁷⁰

Not only is the commission given the responsibility of settling claims for non-scheduled injuries, it also has the ultimate authority to determine the average monthly wage of a claimant.⁷¹ Pending computation of the average wage, compensation will be awarded on the basis of a minimum monthly wage of \$200 for employees twenty-one years of age or over.⁷² Under existing law, the \$200 minimum is applicable even though a lower monthly wage has been determined. The legislature amended § 23-1041(F) so that there is no longer a \$200 minimum after computation of the average monthly wage.

An employee may reopen his claim by filing a petition with the commission.⁷³ Within fourteen days from receipt of notice the insurance carrier must either deny the petition, or process it in the same manner as an original claim.⁷⁴

To protect an injured employee's rights, the new Act requires that insurance carriers and self-insuring employers provide the commission and the employee with notice of all decisions.⁷⁵ Consequently, each insurance carrier, including the State Fund, as well as each self-insuring employer, must notify the commission of the first payment of compensation and advise the employee of the manner in which the amount was determined.⁷⁶ The denial of a claim, any change in the amount of compensation, or the termination of benefits must be promptly reported to the commission and the employee by certified mail.⁷⁷ However, claims

⁶⁹ ARIZ. REV. STAT. ANN. § 23-1047(B) (Supp. 1968). The self-insured employer or insurance company may begin payment of a permanent disability award without waiting for the commission's determination.

⁷⁰ ARIZ. REV. STAT. ANN. § 23-1047(C) (Supp. 1968).

⁷¹ ARIZ. REV. STAT. ANN. § 23-1061(F) (Supp. 1968). The procedure for determining the average monthly wage is as follows: The insurance company or self-insuring employer initially must promptly determine the average monthly wage. Within thirty days after payment of the first installment of compensation, the insurance company must notify the employee and the commission of its determination, as well as the basis for it. The commission then will have thirty days to make its own independent determination, and to notify the employee, employer and insurance company. *Id.* The amount determined by the commission is payable retroactive to the first date of entitlement. *Id.*

⁷² ARIZ. REV. STAT. ANN. § 23-1041(F) (Supp. 1968).

⁷³ ARIZ. REV. STAT. ANN. §§ 23-1061(H)(I) (Supp. 1968).

⁷⁴ ARIZ. REV. STAT. ANN. § 23-1061(I) (Supp. 1968). If the insurer accepts the petition, it is required to pay the reasonable cost of a required statement from a physician which sets forth the physical condition of the claimant. ARIZ. REV. STAT. ANN. § 23-1061(H) (Supp. 1968).

⁷⁵ ARIZ. REV. STAT. ANN. § 23-1061(F) (Supp. 1968).

⁷⁶ *Id.*

⁷⁷ *Id.*

for medical, hospital and surgical benefits which are not denied are to be reported on a semi-annual basis only.⁷⁸ If the commission determines that payment or denial of compensation is improper in any way, it must hold a hearing before a hearing officer within sixty days after it receives notice of the impropriety.⁷⁹

HEARING PROCEDURE

If an interested party⁸⁰ is not satisfied with the determination of the commission or insurance carrier, he may request a hearing before a hearing officer.⁸¹ The request must be in writing and signed by or on behalf of the interested party and include his address.⁸² At least twenty days notice of the time and place of the hearing must be given to all interested parties,⁸³ and the hearing is required to be held in the county where the employee resided at the time of the injury or occurrence of the occupational disease, or at such other place as is selected by the hearing officer.⁸⁴ The officer is not bound by common law or statutory rules of evidence, nor by technical or formal rules of procedure,⁸⁵ and any party is entitled to the issuance of subpoenas, which may be served by the requesting individual or his representative.⁸⁶

Within thirty days after the matter is submitted for decision the hearing officer must make an award,⁸⁷ which is considered *final* unless one of the parties request review by the commission within thirty days.⁸⁸ This procedure represents a substantial change from the present system. Under existing law, although the referee holds hearings to take evidence in the case, his authority is advisory only, and the commission determines the actual award.

⁷⁸ *Id.*

⁷⁹ ARIZ. REV. STAT. ANN. § 23-1061(J) (Supp. 1968).

⁸⁰ Interested party is defined to mean "the employer, the employee; or if the employee is deceased, the surviving spouse or dependents; the commission, the insurance carrier or their representative." ARIZ. REV. STAT. ANN. § 23-901(11) (Supp. 1968).

⁸¹ ARIZ. REV. STAT. ANN. § 23-941(A) (Supp. 1968). The term "hearing officer" replaces "referee," which is used under existing law, because the original draft of the bill relied extensively on Oregon law, which provides for hearing officers. The hearing officers, who must be members of the Arizona state bar, are appointed by the commission and are subject to the Arizona merit system. ARIZ. REV. STAT. ANN. § 23-108.02(A) (Supp. 1968). The director of the commission fixes their compensation, with the chief hearing officer receiving an amount not in excess of \$17,500 and the other hearing officers receiving a salary not to exceed \$16,500. ARIZ. REV. STAT. ANN. § 23-108.02(B) (Supp. 1968).

⁸² ARIZ. REV. STAT. ANN. § 23-941(B) (Supp. 1968). The request must be made within sixty days after notice of the determination. ARIZ. REV. STAT. ANN. § 23-947 (Supp. 1968) (although this section refers to subsection E of § 23-1061, it should refer to subsection F).

⁸³ ARIZ. REV. STAT. ANN. § 23-941(D) (Supp. 1968).

⁸⁴ *Id.*

⁸⁵ ARIZ. REV. STAT. ANN. § 23-941(F) (Supp. 1968). However, he is bound by rules of procedure established by the Commission.

⁸⁶ ARIZ. REV. STAT. ANN. § 23-941(G) (Supp. 1968).

⁸⁷ ARIZ. REV. STAT. ANN. § 23-942(A) (Supp. 1968).

⁸⁸ ARIZ. REV. STAT. ANN. § 23-942(C) (Supp. 1968).

On appeal from a decision of the hearing officer, the commission is not limited to ruling on questions of law, but may consider the entire record and either dispose of the case in such manner as it determines appropriate⁸⁹ or remand to the hearing officer for the taking of further evidence or other necessary action.⁹⁰ A decision must be reached within sixty days after the review has been *requested*, with preference to be given those cases in which the individual is not receiving compensation at the time of the appeal.⁹¹ The award of the commission is final unless within thirty days one of the parties applies to the court of appeals for a writ of certiorari.⁹²

Prior to the Act, a claimant could apply for a writ of certiorari, and, without filing a brief, have his case decided on the merits. The court of appeals permitted this because it was of the opinion that the language of § 23-951(B) prevented it from dismissing the writ.⁹³ This section has been amended to specifically give the court authority to quash or dismiss a writ of certiorari upon the grounds of dismissal applicable to any civil appeal.

ATTORNEY'S FEES

Prior to the new Industrial Commission bill, there were no specific limitations on the fee that an attorney could charge a claimant in a workmen's compensation case. The statute now provides that attorney's fees approved by the commission may not exceed twenty-five percent of the amount an attorney recovers for his client, and, in cases where the award extends over a period in excess of ten years, the fee may not exceed twenty-five percent of the portion of the award paid in the first ten years.⁹⁴ In cases involving only loss of earning capacity, the attorney is limited to twenty-five percent of the award paid during the first five years after the date of the final award.⁹⁵

The new law is actually a benefit to many practitioners. Under § 23-1069(A), the commission has authority to set a reasonable attorney's fee and provide for its payment from the award. Prior to the new law, the Arizona Supreme Court, acknowledged the right of the attorney and claimant to agree upon a fee which was a percentage of the award. However, the court upheld the power of the commission (upon application of a party) to refuse to incorporate the contingent fee into, and

⁸⁹ ARIZ. REV. STAT. ANN. § 23-943(E) (Supp. 1968).

⁹⁰ *Id.*

⁹¹ ARIZ. REV. STAT. ANN. § 23-943(F) (Supp. 1968).

⁹² ARIZ. REV. STAT. ANN. § 23-943(H) (Supp. 1968).

⁹³ The court relied upon the following language. "On the return day the action shall be heard by the Court unless for good cause continued, and shall be heard on the record certified by the Commission." *Luedecke v. Industrial Comm'n*, No. 1 CA-IC 179 (March 5, 1968).

⁹⁴ ARIZ. REV. STAT. ANN. § 23-1069(B) (Supp. 1968).

⁹⁵ *Id.*

order its payment out of, the final award.⁹⁶ The commission, notwithstanding the contractual agreement, was allowed to fix a fee which it thought "reasonable." The attorney, of course, still could contract for a percentage of the award if he was willing to trust the claimant to pay him. To insure his fee, the attorney usually would have compensation payments sent directly to him, and he would then deduct his attorney's fees before forwarding the check to his client. However, there was nothing to prevent a claimant from instructing the commission to send his payments directly to him and refusing to pay his attorney. Now, the commission will be able to approve a contingency fee of up to twenty-five percent of the award and pay the attorney directly.

SAFETY

One of the most important features of the Industrial Commission Act is the creation of a Safety Division within the commission. Under existing law, the commission has no authority to carry out an effective safety program. Although § 23-107(B) authorizes the commission to investigate any place of employment upon receipt of a petition alleging such place is unsafe, the commission has no authority or responsibility for correcting any unsafe conditions disclosed by that investigation.

For the first time Arizona will have an effective safety law. The Act gives the Safety Division of the commission broad authority to draft safety standards and the means to enforce them. Although the commission has the ultimate responsibility for enforcing the safety laws, it will administer them through the Safety Division.⁹⁷

Upon direction by the commission, the Safety Division will draft safety standards in the following manner:

1. The division must first conduct investigations through its employees and consult with persons knowledgeable in the business for which the safety practices are being formulated. After these investigations are conducted, the division will prepare a first draft of the proposed safety standards.⁹⁸

2. The draft will be submitted to all interested persons,⁹⁹ and the division will hold individual or collective meetings to discuss it.¹⁰⁰

⁹⁶ *Timmons v. Industrial Comm'n*, 83 Ariz. 74, 316 P.2d 935 (1957); *McCluskey v. Industrial Comm'n*, 80 Ariz. 255, 296 P.2d 443 (1956).

⁹⁷ ARIZ. REV. STAT. ANN. § 23-402(1) (Supp. 1968). The administrative head of the division, the director, is appointed by the commission for a term of six years, and is removable for cause. ARIZ. REV. STAT. ANN. § 23-403(B) (Supp. 1968). He must be a qualified safety engineer with at least three years experience. ARIZ. REV. STAT. ANN. § 23-403(C)(1)(a) (Supp. 1968). Other specific qualifications, which were taken from TEX. REV. CIV. STAT. art. 5182 a(5) (a) (Supp. 1968), are also set forth in the section.

⁹⁸ ARIZ. REV. STAT. ANN. § 23-404(A)(1) (Supp. 1968).

⁹⁹ Interested persons are "all persons who have filed written notices with the commission of their desire to receive the notices" provided for in the safety laws. ARIZ. REV. STAT. ANN. § 23-401(6) (Supp. 1968).

¹⁰⁰ ARIZ. REV. STAT. ANN. § 23-404(A)(2) (Supp. 1968).

3. The director of the division, or his designee, will then hold a public hearing on the proposed draft. At least twenty days written public notice must be given to all interested persons.¹⁰¹

4. After the public hearing, the director will make whatever changes he deems necessary and submit the safety standards to the commission for its approval or disapproval.¹⁰² After the safety standards have been established, a party may petition the commission to have them changed,¹⁰³ and if the petitioning party is not satisfied with the decision, he may request a hearing on his proposed changes.¹⁰⁴ If the commission decides to change a safety standard, it will direct the Safety Division to do so in the same manner as safety standards are formulated under § 23-404.¹⁰⁵ If the complainant is still dissatisfied, he may petition the Superior Court of Maricopa County for modification of the standard, and he has the further right to appeal its decision.¹⁰⁶

If the division has reasonable cause to believe its standards are being violated, it must give written notice to the offending party.¹⁰⁷ The notice will state that the person must comply with the safety standard within a certain period of time, which cannot be less than five days after he has been notified.¹⁰⁸ However, the accused has the right to challenge the allegation by requesting a hearing before a hearing officer of the division.¹⁰⁹

The hearing must be held between five and thirty days after the date set for compliance¹¹⁰ and will be conducted by a hearing officer.¹¹¹ Although technical rules of evidence are not applicable in workmen's compensation hearings, the officer who decides a safety dispute must conduct the hearings in accordance with the rules of evidence operative in the Superior Court of Arizona. Effect must be given to the rules of privilege recognized by law, and the only evidence which may be con-

¹⁰¹ ARIZ. REV. STAT. ANN. § 23-404(A)(3) (Supp. 1968).

¹⁰² ARIZ. REV. STAT. ANN. § 23-404(A)(4) (Supp. 1968). If the proposed safety standards are disapproved by the commission, it must provide a written explanation of its reasons for disapproval, and the final draft must be reconsidered in the same manner as an original draft. ARIZ. REV. STAT. ANN. § 23-404(A)(5) (Supp. 1968).

¹⁰³ ARIZ. REV. STAT. ANN. § 23-407(A) (Supp. 1968).

¹⁰⁴ ARIZ. REV. STAT. ANN. § 23-407(B) (Supp. 1968). The request must be made within thirty days after notice of the commission's actions, and the hearing must be held between fifteen and forty-five days after the commission receives the request. *Id.* The commission must make its decision within thirty days after the hearing has been closed and serve on the petitioning party a written copy of the decision. ARIZ. REV. STAT. ANN. § 23-407(C) (Supp. 1968).

¹⁰⁵ ARIZ. REV. STAT. ANN. § 23-407(C) (Supp. 1968). See p. 383 *supra*.

¹⁰⁶ ARIZ. REV. STAT. ANN. § 23-407(D) (Supp. 1968).

¹⁰⁷ ARIZ. REV. STAT. ANN. § 23-405(A) (Supp. 1968).

¹⁰⁸ ARIZ. REV. STAT. ANN. § 23-405(B) (Supp. 1968).

¹⁰⁹ *Id.* The statute does not delineate the form of request, who is to receive the request, or when it must be made. The commission, no doubt, will issue regulations answering these questions. Any form of request should be sufficient so long as it is made before the period for compliance expires.

¹¹⁰ *Id.*

¹¹¹ ARIZ. REV. STAT. ANN. § 23-405(C) (Supp. 1968).

sidered is that which is presented at the hearing.¹¹² The hearing officer may take notice of general, technical or scientific facts within his specialized knowledge, but he must notify the opposing party of any materials so noticed and afford him an opportunity to contest them.¹¹³

If the hearing officer determines that a violation has not occurred or that the person has an adequate defense in law or in fact, the proceedings are terminated. However, if he determines that a violation has occurred, he will submit his decision to the commission, which *may* order the charged person to cease and desist.¹¹⁴

If the cease and desist order is not obeyed, the Safety Division, with the prior consent of the commission, is given authority to seek an injunction in the superior court of the county in which the violation is alleged to have occurred.¹¹⁵ The court procedure will be the same as in other actions for preliminary injunctions except that the commission does not have to provide security.¹¹⁶ A person held in contempt of an injunctive order of the court must be fined at least \$50 but no more than \$300, with each day of violation constituting a separate contempt.¹¹⁷

If the Safety Director becomes aware of a safety hazard which, if not immediately eliminated, could cause death or severe injury, it is not necessary that he follow the normal cumbersome procedure. Provided he has reasonable cause to believe that a violation will result in "severe, immediate and irreparable injury or harm," he has the authority, with approval of the commission, to file a complaint with the superior court of the county in which the alleged violation is occurring.¹¹⁸ The court must hold a hearing and rule on his complaint within three days after service on the defendant.¹¹⁹ If it is determined that the safety standard is proper and reasonable, that the defendant violated the standard, and that continued violation will result in severe, immediate and irreparable injury or harm, the court must issue a preliminary injunction ordering the defendant to cease and desist. If the defendant fails to do so, the court may hold him in contempt.¹²⁰

¹¹² ARIZ. REV. STAT. ANN. § 23-405(D) (Supp. 1968).

¹¹³ *Id.*

¹¹⁴ ARIZ. REV. STAT. ANN. § 23-405(E) (Supp. 1968). Although the hearing officer conducts the hearing, his decision is merely a recommendation since only the commission can issue a cease and desist order. This procedure is similar to the hearing process for workmen's compensation cases before the new Act. The commission must reach its decision within thirty days after the proceedings before the hearing officer have been completed.

¹¹⁵ ARIZ. REV. STAT. ANN. § 23-405(F) (Supp. 1968).

¹¹⁶ ARIZ. REV. STAT. ANN. § 23-411 (Supp. 1968).

¹¹⁷ ARIZ. REV. STAT. ANN. § 23-405(F) (Supp. 1968). The losing party may appeal from the superior court's decision.

¹¹⁸ ARIZ. REV. STAT. ANN. § 23-406(A) (Supp. 1968).

¹¹⁹ ARIZ. REV. STAT. ANN. § 23-406(B) (Supp. 1968).

¹²⁰ *Id.* Information or facts developed during the course of an investigation by the commission or Safety Division may be used only to draft or enforce safety standards and are not admissible in any court except to carry out the safety law. ARIZ. REV. STAT. ANN. § 23-408(A) (Supp. 1968). Also, neither the commission nor the Safety Division may publicize any information obtained during an investigation

The legislature did not want the Safety Division or the program involved in labor disputes; nor did it want the safety laws used as leverage in collective bargaining negotiations. Accordingly, § 23-409 provides that the safety laws are not applicable to any place of employment while such place is being subjected to strikes, lockouts or other labor disputes. All safety functions, as well as their enforcement, which are designated by law to other federal or state agencies (such as the mine inspection laws) are exempt from the new safety laws.¹²¹ While cities or counties may enact their own safety codes,¹²² if the commission files written safety standards with the clerk of the city or county, this will establish minimum requirements which must be followed.¹²³

THE ACT'S EFFECT ON INSURANCE COMPANIES, EMPLOYERS AND EMPLOYEES

The reorganization of the commission affects private insurance companies, employers and employees in Arizona.

Insurance Companies

The revamping of the commission will benefit the insurance companies by giving them the opportunity to compete on an equal basis with the State Compensation Fund. This was accomplished by transferring the regulation of private insurance carriers, as well as the rate-making function, from the commission to the Insurance Department, and by creating a separate State Compensation Fund. As previously mentioned, the rates to be charged by all insurance companies writing workmen's compensation insurance in Arizona will be set by rating organizations, but the insurance companies may deviate from the set rate with the approval of the Insurance Department.¹²⁴

Prior to the new law, workmen's compensation insurance for the State of Arizona and all political subdivisions had to be written by the State Compensation Fund. After January 1, 1971, insurance companies will be able to write workmen's compensation insurance for counties, cities, towns, municipal corporations and school districts.¹²⁵ Only the state will be required to obtain insurance from the State Fund after that date.¹²⁶

The Act also requires any person receiving permanent compensa-

prior to instituting a proceeding to enforce the safety standards. ARIZ. REV. STAT. ANN. § 23-408(B) (Supp. 1968). Any person improperly revealing information under § 23-408 is guilty of a misdemeanor and may be fined \$1,000 or imprisoned for one year or both. ARIZ. REV. STAT. ANN. § 23-408(C) (Supp. 1968).

¹²¹ ARIZ. REV. STAT. ANN. § 23-410(A) (Supp. 1968).

¹²² ARIZ. REV. STAT. ANN. § 23-410(B) (Supp. 1968).

¹²³ ARIZ. REV. STAT. ANN. § 23-410(C) (Supp. 1968).

¹²⁴ See p. 374 *supra*.

¹²⁵ ARIZ. REV. STAT. ANN. § 23-962(A) (Supp. 1968). Political subdivisions will be able to choose between various private insurance carriers and the State Fund.

¹²⁶ *Id.*

tion benefits to report annually all of his earnings for the prior twelve months to the commission, which will then notify the insurance carrier paying his benefits.¹²⁷ It has long been established that if the employee has been able to increase his earnings, his benefits may be reduced.¹²⁸ The insurance companies are also given the authority to cancel a policy for non-payment of premiums without approval of the commission.¹²⁹

Employers

Since discovery of the deficit in the State Fund prompted the re-vamping of the commission, several provisions were inserted in the Act which will reduce that deficit without substantially increasing the cost to the employer. Combining the three presently existing funds into one workmen's compensation fund will reduce the deficit in two ways. In the first place, combining all these funds should reduce the administrative expenses incurred in operating the three funds. Secondly, a \$2,500,000 surplus in the Occupational Disease Fund will be used to reduce the deficit in the Workmen's Compensation Fund.¹³⁰ Broadening the investment authority should also reduce the deficit by increasing the fund's rate of return. Finally, provision was made to equitably eliminate any remaining deficit. On or before July 1, 1969, the board of directors of the State Fund will determine the actuarial deficit as of January 1, 1969. Until the deficit is eliminated, a deficit premium of one percent will be collected by the State Fund on all workmen's and occupational disease compensation insurance premiums. Also, any additional yield from the State Fund, in excess of the effective investment yield for the calendar year 1968, will be applied to extinguish the deficit.¹³¹

Employers will be able to take advantage of more competitive insurance rates, and workmen's compensation insurance may be purchased from the State Fund or any carrier licensed to sell such insurance in Arizona. Since the private insurance companies will be able to compete with the State Compensation Fund on an equal basis, employers will be able to take advantage of this competition through lower rates.

Employees

An employee will receive his workmen's compensation benefits much sooner as a result of the reorganization. Under existing law, there is no time period within which the commission must begin compensation payments after an employee files a claim. Under the new Act after an employer receives notice of a claim, he must inform his insurance carrier

¹²⁷ ARIZ. REV. STAT. ANN. § 23-1047(D) (Supp. 1968). The insurance company may suspend payments if the report is not filed.

¹²⁸ *Steward v. Industrial Comm'n*, 69 Ariz. 159, 211 P.2d 217 (1949).

¹²⁹ ARIZ. REV. STAT. ANN. § 23-961(E) (Supp. 1968). At least thirty days notice of any cancellation must be given to the employer and the commission. ARIZ. REV. STAT. ANN. § 23-961(F) (Supp. 1968). Under existing law, an insurance company needs the approval of the commission to cancel a policy for any reason.

¹³⁰ INDUSTRIAL COMMISSION OF ARIZONA, 1967 ANNUAL REPORT at 22.

¹³¹ ARIZ. REV. STAT. ANN. § 23-961(D) (Supp. 1968).

within ten days and the carrier must begin payments within fourteen days, unless it denies the right to compensation.¹³² Also, if an employee contests the denial of compensation or the amount, his rights will be determined in a more expeditious manner. At present, there are no time provisions governing the hearing procedure for a contested claim. Under the new Act, the hearing officer must make a decision within thirty days after the matter has been submitted;¹³³ and, if the decision is appealed to the commission, it must make its decision within sixty days.¹³⁴ If the decision of the commission goes to the court of appeals for review, it must be heard before other civil proceedings except election contests and actions affecting the Corporation Commission.¹³⁵

The employee should obtain a more impartial decision from a hearing officer than from a referee, since referees are appointed by and serve at the pleasure of the commission. They do not have the authority to make final awards, but may only make recommendations to the commission. Under the new Act, the hearing officers, although also appointed by the commission, are subject to the merit system, and their awards are final unless appealed to the commission.¹³⁶ Furthermore, by creating a separate State Compensation Fund, the Act has eliminated the conflicting interests caused by the commissioners adjudicating contested claims at the same time they were operating a state insurance company.

An employee also has a better chance of being covered under the new Act, since the assigned risk pool assures that any employer, no matter how high his risk, may obtain insurance and provide protection for his employees.¹³⁷ Even if the employer does not provide such protection, an employee still may be paid benefits out of the Special Fund.¹³⁸

Many employees will also benefit by the increase in the premium tax to be used for vocational rehabilitation,¹³⁹ by a substantial increase in the maximum medical benefits payable to a worker who becomes totally or partially disabled from an occupational disease,¹⁴⁰ by the addition of atomic radiation as an occupational disease,¹⁴¹ and by a

¹³² See p. 379 *supra*.

¹³³ See p. 381 *supra*.

¹³⁴ See p. 382 *supra*.

¹³⁵ ARIZ. REV. STAT. ANN. § 23-950 (Supp. 1968).

¹³⁶ See p. 381 *supra*.

¹³⁷ See p. 375 *supra*.

¹³⁸ See p. 378 *supra*.

¹³⁹ See p. 377 *supra*.

¹⁴⁰ Medical benefits for total disability have been increased from a maximum of \$1,000 to full coverage up to \$2,000 and eighty percent of all additional medical expenses. For partial disability, medical expenses have been increased from a maximum of \$500 to \$1,000 with eighty percent of the amount over \$1,000 paid to a maximum of \$5,000. ARIZ. REV. STAT. ANN. § 23-1241(3) (Supp. 1968).

¹⁴¹ ARIZ. REV. STAT. ANN. § 23-1102(12) (Supp. 1968).

provision providing for treatment by faith healers.¹⁴² Finally, employees should have a safer place to work after safety standards have been established.

CONCLUSION

Although the impetus to investigate and reorganize the Industrial Commission was caused by the sharp increase in rates that occurred in July of 1967, the legislature was not content with merely revising the rates and proceeded to completely revamp the commission. The three member commission was abolished on January 8, 1969, and a new five-man commission will be appointed by the Governor. Many of the commission's present functions have been eliminated, including the regulation of private insurance carriers, determination of rates for workmen's compensation insurance, and the operation of a state insurance company. A separate State Compensation Fund has been created, and an Insurance Department will regulate the carriers and their rates. The commission has been given the authority and responsibility for establishing and enforcing safety standards through a Safety Division. The basic responsibility for processing claims — except occupational disease claims — has been transferred from the commission to private insurance carriers and the State Fund, although the commission has been vested with the authority to review their decisions. Not only have time limitations been imposed on the processing of claims, but the hearing process also has been subjected to time limitations in order to facilitate determination of the rights of an employee and to compensate him as quickly as possible. The authority to hire and fire hearing officers has been transferred from the commission to the director of the commission, subject to the merit system. Also, the awards of hearing officers are now final, unless there is an appeal to the commission. This reorganization should bring to Arizona a fairer, more efficient, and more effective workmen's compensation system.

¹⁴² ARIZ. REV. STAT. ANN. § 23-1061.01 (Supp. 1968). Although this section was enacted at the request of Christian Scientists, it is not limited to Christian Scientist practioners. *Any workman* may rely "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 practioner thereof" without having his compensation benefits reduced or suspended. However, the nature of the injury or disability must have been established to the satisfaction of the commission before the workman may rely on such treatment. This section does not prevent an insurance carrier, the commission or an employer from requiring examinations by a medical doctor under § 23-1026.

