

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 83rd General Assembly  
3 Regular Session, 2001  
4

*As Engrossed: H3/12/01 H3/23/01*

# A Bill

Act 1757 of 2001  
HOUSE BILL 2646

5 By: Representatives Hendren, Bolin, Green, Holt, Adams, Gillespie, Scroggin, Roebuck, Goss,  
6 Trammell, Allison  
7 By: Senators DeLay, Miller, Horn  
8  
9

## For An Act To Be Entitled

11 AN ACT TO MAKE TECHNICAL CORRECTIONS TO THE  
12 ARKANSAS WORKERS' COMPENSATION LAW BY AMENDING  
13 ARKANSAS CODE 11-9-102(9)(D), 11-9-102(17)(A),  
14 11-9-207(a), 11-9-302, 11-9-303, AND 11-9-402;  
15 AND BY AMENDING ARKANSAS CODE 11-9-711(b)(1), 11-  
16 10-502(e), 11-14-101, 11-14-102(14), AND 11-14-  
17 105(a); AND FOR OTHER PURPOSES.

## Subtitle

19 AN ACT TO MAKE TECHNICAL CORRECTIONS TO  
20 THE ARKANSAS WORKERS' COMPENSATION LAW;  
21 AND FOR OTHER PURPOSES.  
22  
23  
24

25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

26  
27 SECTION 1. Arkansas Code 11-9-102(9)(D), concerning the definition of  
28 "employee" under the Workers' Compensation Law, is amended to read as  
29 follows:

30 (D) Any individual ~~receiving~~ holding from the commission a  
31 current certification of noncoverage under this chapter shall ~~hereafter,~~  
32 during the term of his or her certification or any renewals thereof, or until  
33 he or she elects otherwise, whichever time period is shorter, be conclusively  
34 presumed not to be an employee for purposes of this chapter or otherwise.  
35

36 SECTION 2. Arkansas Code 11-9-102(17)(A), concerning definitions under

1 the Workers' Compensation Law, is amended to read as follows:

2 (17)(A) "State average weekly wage" means the state average  
3 weekly wage determined annually by the ~~Director of the Department of Labor~~  
4 Arkansas Employment Security Department in the preceding calendar year  
5 pursuant to § 11-10-502.

6  
7 SECTION 3. Arkansas Code 11-9-207(a), concerning duties and powers of  
8 the Workers' Compensation Commission, is amended to add an additional  
9 subsection to read as follows:

10 (14) To transfer the excess of income over expenses from the  
11 commission's annual educational conference to Kids' Chance of Arkansas, Inc.,  
12 a non-profit charitable organization designed to provide scholarships to  
13 children of workers who have been killed or become permanently and totally  
14 disabled from a compensable injury, including any accumulation from prior  
15 years' conferences.

16  
17 SECTION 4. Arkansas Code 11-9-302 is amended to read as follows:

18 11-9-302. Qualifying fees for carriers, third party administrators,  
19 and self-insurers.

20 (a) Each carrier writing compensation insurance in this state shall  
21 pay to the Insurance Commissioner, in addition to the premium taxes and fees  
22 now required under existing laws, at the time of securing the first license  
23 to transact business in the state, the sum of five hundred dollars (\$500) for  
24 the privilege of qualifying with the commission for the writing of  
25 compensation insurance.

26 (b) At the time of qualifying, each self-insurer or third party  
27 administrator shall pay to the Workers' Compensation Commission the sum of  
28 one hundred dollars (\$100) for the privilege of qualifying as a self-insurer  
29 or third party administrator.

30 (c) All carriers ~~or~~ self-insurers, or third party administrators  
31 qualifying under the provisions of this chapter shall be required to pay this  
32 initial assessment before they shall be qualified.

33 (d) These fees shall be deposited into the Workers' Compensation Fund  
34 created in § 11-9-301.

35 (e) The Workers' Compensation Commission may assess a third party  
36 administrator an annual fee of one hundred dollars (\$100).

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36

SECTION 5. Arkansas Code 11-9-303 is amended to read as follows:

11-9-303. Payment of tax by carrier.

(a) In addition to the premium taxes collected from carriers, the carriers shall pay annually to the Workers' Compensation Commission a tax, at the rate to be determined as provided in § 11-9-306 but not to exceed three percent (3%), on all written manual premiums resulting from the writing of workers' compensation insurance on risks within the state.

(b) "Written manual premium" shall mean premium produced in a given year by the manual rates in effect during the experience period and shall exclude the premium produced by the expense constant. Further, written manual premium, for the purpose of this law, means premium before any allowable deviated discounts, any experience rating modification, any premium discount, any reinsurance or deductible arrangement as common with fronting carriers, any dividend consideration, or other trade discount.

(c)(1) This tax shall be collected by the Insurance Commissioner from the carriers at the same time and in the same manner as provided in the premium tax sections of the law of this state and deposited into the funds created in § 11-9-301.

~~(2) Immediately upon deposit into the funds created in § 11-9-301, the Chief Fiscal Officer of the State shall transfer the first one hundred thousand dollars (\$100,000) of said taxes into the State Insurance Department Trust Fund used for the maintenance, operation, and support of the State Insurance Department; provided, however, that the total of these transferred funds combined together with the transferred funds provided in § 11-9-305(d) [Repealed] for the maintenance, operation, and support of the department shall not exceed one hundred thousand dollars (\$100,000) in any one (1) fiscal year.~~

~~(3)(2)~~ Said transfer from the funds created in § 11-9-301 shall be in the same proportions that deposits were made into the three (3) funds as set forth in § 11-9-306(a)-(c).

(d) Assessments upon which premium taxes are based shall be made on forms prescribed jointly by the Insurance Commissioner and the Workers' Compensation Commission.

(e) Premium tax payments shall be made by check payable ~~both~~ to the Workers' Compensation Commission ~~and to the appropriate funds created in §~~

1 ~~11-9-301.~~

2

3 SECTION 6. Arkansas Code 11-9-402 is amended to read as follows:

4 11-9-402. Liability of prime contractors and subcontractors - Sole  
5 proprietorships or partnerships.

6 (a) Where a subcontractor fails to secure compensation required by  
7 this chapter, the prime contractor shall be liable for compensation to the  
8 employees of the subcontractor.

9 (b)(1) Any contractor or his insurance carrier who shall become liable  
10 for the payment of compensation on account of injury to or death of an  
11 employee of his subcontractor may recover from the subcontractor the amount  
12 of the compensation paid or for which liability is incurred.

13 (2) The claim for the recovery shall constitute a lien against  
14 any moneys due or to become due to the subcontractor from the prime  
15 contractor.

16 (3) A claim for recovery, however, shall not affect the right of  
17 the injured employee or the dependents of the deceased employee to recover  
18 compensation due from the prime contractor or his insurance carrier.

19 (c)(1)(A) When a sole proprietorship or partnership fails to elect to  
20 cover the sole proprietor or partners under this chapter, the prime  
21 contractor is not liable under this chapter for injuries sustained by the  
22 sole proprietor or partners if the sole proprietor or partners are not  
23 employees of the prime contractor.

24 (B)(i) A sole proprietor or the partners of a partnership  
25 who do not elect to be covered by this chapter and be deemed employees  
26 thereunder and who deliver to the prime contractor a current certification of  
27 noncoverage issued by the Workers' Compensation Commission shall be  
28 conclusively presumed not to be covered by the law or to be employees of the  
29 prime contractor during the term of his certification or any renewals  
30 thereof.

31 (ii) This provision shall not affect the rights or  
32 coverage of any employees of the sole proprietor or of the partnership.

33 (2) Furthermore, the prime contractor's insurance carrier is not  
34 liable for injuries to the sole proprietor or partners described in this  
35 section who have provided a current certification of noncoverage, and the  
36 carrier shall not include compensation paid by the prime contractor to the

1 sole proprietor or partners described above in computing the insurance  
2 premium for the prime contractor.

3 (3)(A) Any prime contractor who, after being presented with a  
4 current certification of noncoverage by a sole proprietor or partnership,  
5 nonetheless compels the sole proprietor or partnership to pay or contribute  
6 to workers' compensation coverage of that sole proprietor or partnership  
7 shall be guilty of a Class D felony.

8 (B) Further, any prime contractor who compels a sole  
9 proprietor or partnership to obtain a certification of noncoverage when the  
10 sole proprietor or partnership does not desire to do so is guilty of a Class  
11 D felony.

12 (C) Further, any applicant who makes a false statement  
13 when applying for a certification of noncoverage, or any renewals thereof,  
14 shall be guilty of a Class D felony.

15 (d)(1) A certification of noncoverage issued by the Workers'  
16 Compensation Commission after July 1, 2001, shall be valid for two (2) years  
17 after the effective date stated thereon. Both the effective date and the  
18 expiration date must be listed on the face of the certificate by the  
19 commission. The certificate must expire at midnight, two (2) years from its  
20 issue date, as noted on the face of the certificate.

21 (2) Any certification of noncoverage which is in effect on July  
22 1, 2001, shall expire as follows:

23 (A) A certification of noncoverage issued in the years  
24 1993 or 1994 shall expire at midnight on September 30, 2001;

25 (B) A certification of noncoverage issued in the years  
26 1995 or 1996 shall expire at midnight on December 31, 2001;

27 (C) A certification of noncoverage issued in the years  
28 1997 or 1998 shall expire at midnight on March 31, 2002;

29 (D) A certification of noncoverage issued in the years  
30 1999 or 2000 shall expire at midnight on June 30, 2002;

31 (3) The commission may assess a fee, not to exceed fifty dollars  
32 (\$50.00), with each application for a certification of noncoverage or any  
33 renewals thereof.

34 (4) Any certification of noncoverage issued by the commission  
35 shall contain the social security number and notarized signature of the  
36 applicant. The notarization shall be in a form and manner prescribed by the

1 commission.

2 (5) The commission may by rule prescribe forms and procedures  
3 for issuing or renewing a certification of noncoverage.

4  
5 SECTION 7. Arkansas Code 11-9-711(b)(1), concerning appeals of a  
6 compensation order or award made by the Workers' Compensation Commission, is  
7 amended by adding an additional subdivision to read as follows:

8 (C) The commission may assess and collect an appeal  
9 processing fee, not to exceed fifteen dollars (\$15.00), from the appellant  
10 and, if cross appealed, the cross appellant.

11  
12 SECTION 8. Arkansas Code 11-10-502(e), concerning weekly benefit  
13 amounts under the Arkansas Employment Security Law, is amended to read as  
14 follows:

15 (e) On June 1 of each year, the ~~Director of the Department of Labor~~  
16 Arkansas Employment Security Department shall determine the average weekly  
17 wage for insured employment for the preceding calendar year in the following  
18 manner:

19 (1) The sum of the total monthly employment reported for the  
20 calendar year shall be divided by twelve (12) to determine the average  
21 monthly employment;

22 (2) The sum of the total wages reported for the previous  
23 calendar year shall be divided by the average monthly employment to determine  
24 the average annual wage;

25 (3) The average annual wage shall be divided by fifty-two (52)  
26 to determine the average weekly wage for insured employment.

27  
28 SECTION 9. Arkansas Code 11-14-101 is amended to read as follows:

29 11-14-101. Legislative intent.

30 (a) It is the intent of the General Assembly to promote drug-free  
31 workplaces in order that employers in this state may be afforded the  
32 opportunity to maximize their levels of productivity, enhance their  
33 competitive positions in the marketplace, and reach their desired levels of  
34 success without experiencing the costs, delays, and tragedies associated with  
35 work-related accidents resulting from drug or alcohol abuse by employees. It  
36 is further the intent of the General Assembly that drug and alcohol abuse be

1 discouraged and that employees who choose to engage in drug or alcohol abuse  
2 face the risk of unemployment and the forfeiture of workers' compensation  
3 benefits.

4 (b) If an employer implements a drug-free workplace program in  
5 accordance with this chapter which includes notice, education, and procedural  
6 requirements for testing for drugs and alcohol pursuant to rules developed by  
7 the Workers' Health and Safety Division of the Workers' Compensation  
8 Commission, the covered employer may require the employee to submit to a test  
9 for the presence of drugs or alcohol, and if a drug or alcohol is found to be  
10 present in the employee's system at a level prescribed by statute or by rule  
11 adopted pursuant to this chapter, the employee may be terminated and may  
12 ~~forfeit eligibility for~~ be precluded from workers' compensation medical and  
13 indemnity benefits. However, a drug-free workplace program must require the  
14 covered employer to notify all employees that it is a condition of employment  
15 for an employee to refrain from reporting to work or working with the  
16 presence of drugs or alcohol in the employee's body, and if an injured  
17 employee refuses to submit to a test for drugs or alcohol, the employee  
18 ~~forfeits eligibility for~~ may be precluded from workers' compensation medical  
19 and indemnity benefits. In the event of termination, an employee shall be  
20 entitled to contest the test results before the Department of Labor.

21 (c) Nothing in the act, which originated as House Bill 2646 of 2001,  
22 nor in Act 1552 of 1999 shall impliedly repeal any part of Act 796 of 1993.  
23 Act 796 of 1993 is expressly reaffirmed by this act, which originated as  
24 House Bill 2646 of 2001.

25  
26 SECTION 10. Arkansas Code 11-14-102(14), concerning definitions as  
27 used in the chapter on voluntary program for drug-free workplaces, is amended  
28 to read as follows:

29 (14) "~~Drug testing~~ Medical review officer" means a licensed physician,  
30 pharmacist, pharmacologist or similarly qualified individual employed with or  
31 contracted with a covered employer:

32 (A) Who has knowledge of substance abuse disorders, laboratory  
33 testing procedures, and chain of custody collection procedures;

34 (B) Who verifies positive, confirmed test results; and

35 (C) Who has the necessary medical training to interpret and  
36 evaluate an employee's positive test result in relation to the employee's

1 *medical history or any other relevant biomedical information;*

2

3 *SECTION 11. Arkansas Code 11-14-105(a), concerning a written policy*  
4 *statement under the chapter on voluntary program for drug-free workplaces, is*  
5 *amended to read as follows:*

6 *(a) One (1) time only prior to testing, a covered employer shall give*  
7 *all employees and job applicants for employment a written policy statement*  
8 *which contains:*

9 *(1) A general statement of the covered employer's policy on*  
10 *employee drug or alcohol use, which must identify:*

11 *(A) The types of drug or alcohol testing an employee or*  
12 *job applicant may be required to submit to, including reasonable-suspicion*  
13 *drug or alcohol testing or drug or alcohol testing conducted on any other*  
14 *basis; and*

15 *(B) The actions the covered employer may take against an*  
16 *employee or job applicant on the basis of a positive confirmed drug or*  
17 *alcohol test result;*

18 *(2) A statement advising the employee or job applicant of the*  
19 *existence of this section;*

20 *(3) A general statement concerning confidentiality;*

21 *(4) Procedures for employees and job applicants to*  
22 *confidentially report to a drug testing officer the use of prescription or*  
23 *nonprescription medications to a ~~drug-testing~~ medical review officer after*  
24 *being tested, but only if the testing process has revealed a positive result*  
25 *for the presence of alcohol or drug use;*

26 *(5) The consequences of refusing to submit to a drug or alcohol*  
27 *test;*

28 *(6) A representative sampling of names, addresses and telephone*  
29 *numbers of employee assistance programs and local drug or alcohol*  
30 *rehabilitation programs;*

31 *(7) A statement that:*

32 *(A) An employee or job applicant who receives a positive*  
33 *confirmed test result may contest or explain the result to the ~~drug-testing~~*  
34 *medical review officer within five (5) working days after receiving written*  
35 *notification of the test result;*

36 *(B) If an employee's or job applicant's explanation or*



1 challenge is unsatisfactory to the drug testing review officer, the ~~drug~~  
2 ~~testing~~ medical review officer shall report a positive test result back to  
3 the covered employer; and

4 (C) A person may contest the drug or alcohol test result  
5 pursuant to rules adopted by the Workers' Health and Safety Division of the  
6 Workers' Compensation Commission;

7 (8) A statement informing the employee or job applicant of the  
8 employee's responsibility to notify the laboratory of any administrative or  
9 civil action brought pursuant to this section;

10 (9) A list of all drug classes for which the employer may test;

11 (10) A statement regarding any applicable collective bargaining  
12 agreement or contract and any right to appeal to the applicable court;

13 (11) A statement notifying employees and job applicants of their  
14 right to consult with a ~~drug testing~~ medical review officer for technical  
15 information regarding prescription or nonprescription medication; and

16 (12) A statement complying with the requirements for notice  
17 under § 11-14-101.

18  
19 SECTION 12. All laws and parts of laws expressly in conflict with this  
20 act are repealed. No part of Act 796 of 1993 shall be impliedly repealed by  
21 this act or Act 1552 of 1999.

22 /s/ Hendren, et al.

23  
24  
25 APPROVED: 4/18/2001  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36