

1 **State of Arkansas**
2 **78th General Assembly**
3 **Regular Session, 1991**

A Bill

HOUSE BILL 1137

4 **By: Representatives Flanagin and Goodwin**

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For An Act To Be Entitled

8 "AN ACT TO AMEND ARKANSAS CODE ANNOTATED 11-9-409 TO
9 TRANSFER THE DUTIES OF ASSIGNING WORKERS' COMPENSATION
10 RISKS REJECTED BY INSURANCE COMPANIES TO THE INSURANCE
11 DEPARTMENT; TO PROVIDE FOR A MORE EQUITABLE DISTRIBUTION
12 OF ASSIGNMENTS; AND FOR OTHER PURPOSES."

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

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16 SECTION 1. Arkansas Code Annotated 11-9-409 is amended to read as
17 follows:

18 "11-9-409. Risks rejected by insurance companies - Assignment by
19 commissioner.

20 (a) ACCEPTANCE OF SECTION REQUIRED. It shall be unlawful for any
21 insurer to engage, in whole or part, in writing workers' compensation
22 insurance in the State of Arkansas unless the insurer has filed with the
23 Insurance Commissioner written acceptance of all provisions of this chapter.
24 *Every policy or contract for worker's compensation insurance written under the*
25 *provisions of this section shall contain all policy provisions for worker's*
26 *compensation insurance required under Arkansas Code §11-9-408.*

27 (b) MANDATORY PARTICIPATION IN THE APPORTIONMENT OF REJECTED RISKS. All
28 companies licensed to write workers' compensation and employers' liability
29 insurance in this state shall participate, as provided in this section, in the
30 equitable apportionment among them of insurance which may be afforded
31 applicants who are in good faith entitled to, but who are unable to procure,
32 the insurance.

33 (c) ASSIGNMENT OF REJECTED RISK.

34 (1) When it is found by the Commissioner that the application of
35 an employer for workers' compensation insurance has been rejected and that the

1 employer is entitled to insurance pursuant to subsection (d) of this chapter,
2 the Commissioner shall designate an insurer which shall be obligated to issue
3 forthwith a standard policy providing such insurance for the employer.

4 (2) The policy shall contain only the usual and customary
5 provisions found in such policies and shall cover the entire liability of the
6 employer as to the business for which workers' compensation insurance has been
7 rejected.

8 (3) The Commissioner shall make equitable distribution of the
9 assignments among insurers in a manner so that, as far as practicable, no
10 insurer shall be assigned a larger proportion of workers' compensation
11 premiums under assigned policies during any calendar year than that which the
12 total of workers' compensation premiums written in the State of Arkansas by
13 the insurer during the preceding year bears to the total *worker's compensation*
14 premiums written in the State of Arkansas by all insurers during the preceding
15 calendar year.

16 (4) The refusal of an insurer to issue voluntarily a policy
17 providing workers' compensation insurance to an employer may, in the
18 discretion of the Commissioner, be considered to be a rejection of the
19 employer's application for the insurance by the insurer within the meaning of
20 this section.

21 (d) EMPLOYERS ENTITLED TO INSURANCE. An employer shall be entitled to
22 insurance pursuant to the provisions of this section, provided:

23 (1) The employer pays the estimated annual premium therefor in
24 advance or makes suitable provisions to pay the premium when due;

25 (2) The employer has satisfied the Commissioner that he has
26 complied, or will comply substantially, with all effective laws and lawful
27 orders, rules, and regulations made by public authorities relating to the
28 welfare, health, and safety of employees; and

29 (3) The employer, in the opinion of the Commissioner, shall not
30 be in default of payment of any premium for workers' compensation insurance.

31 (e) CANCELLATION OF POLICY.

32 (1) If, after the issuance of a policy providing insurance
33 pursuant to the provisions of this section, the insurer which issued the
34 policy finds that the employer to whom the policy was issued is not or has
35 ceased to be entitled to the insurance, the insurer shall have the right, with

1 the approval of the Commissioner, to cancel the policy in the manner provided
2 in the policy.

3 (2) However, the insurer desiring to cancel the policy shall give
4 notice in writing to the Commissioner and the employer of its desire to
5 cancel.

6 (3) The Commissioner may approve the cancellation unless the
7 employer shall, within ten (10) days after receipt of the notice, file with
8 the Commissioner objections thereto.

9 (4) If the employer files objections, the Commissioner shall hear
10 and decide the case within a reasonable time thereafter.

11 (5) Reasonable notice as to the time and place of the hearing
12 shall be given to all interested parties.

13 (6) If a policy is cancelled pursuant to this subsection, the
14 risk shall not be assigned again until the Commissioner is fully satisfied
15 that the employer has become duly qualified for insurance.

16 (f) INSURANCE BY INSURER OTHER THAN TO WHICH ASSIGNED. By arrangement
17 between insurers which are members of a reinsurance pool, and with the
18 approval of the Commissioner and that pool, an insurer may issue a policy to
19 an employer who had been assigned by the Commissioner to another insurer. The
20 issuance of such policy shall constitute a compliance with and be subject to
21 the provisions of this section and shall not affect the allotment to the
22 respective insurers of assignments thereafter to be made by the Commissioner.

23 (g) INSURER'S LIABILITY. Nothing in this section shall be construed to
24 affect in any way the primary liability of the insurer to which the risk is
25 assigned to pay the workers' compensation due in accordance with the
26 provisions of this chapter.

27 (h) FAILURE OF INSURER TO COMPLY. If any insurer refuses or neglects
28 to comply with the provisions of this section or with any lawful order or
29 ruling made by the Commissioner pursuant to this section, the insurer shall be
30 subject to the administrative penalties provided for in the Insurance Code.

31 (i) REVIEW. Any person aggrieved by an order or ruling made by the
32 Commissioner under this section shall have the right to appeal said order or
33 ruling pursuant to A.C.A. §23-61-307.

34 (j) AUTHORITY TO DELEGATE. The Commissioner, at his discretion, shall
35 be authorized to delegate all or any part of the assignment process.

1 (k) RULES AND REGULATIONS. The Insurance Commission is authorized to
2 promulgate such reasonable rules and regulations as necessary to carry out the
3 provisions of this chapter."
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5 SECTION 2. All provisions of this act of a general and permanent nature
6 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
7 Revision Commission shall incorporate the same in the Code.
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9 SECTION 3. If any provision of this act or the application thereof to
10 any person or circumstance is held invalid, such invalidity shall not affect
11 other provisions or applications of the act which can be given effect without
12 the invalid provision or application, and to this end the provisions of this
13 act are declared to be severable.
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15 SECTION 4. All laws and parts of laws in conflict with this act are
16 hereby repealed.
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18 */s/P. Flanagan and L. Goodwin*
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