

1 **State of Arkansas**
2 **79th General Assembly**
3 **Regular Session, 1993**
4 **By: Representative Thicksten**

A Bill

HOUSE BILL

For An Act To Be Entitled

8 "AN ACT TO AMEND VARIOUS SECTIONS OF SUBCHAPTER 7 OF
9 CHAPTER 2 OF TITLE 21 OF THE ARKANSAS CODE ANNOTATED
10 RELATING TO THE SELF-INSURED FIDELITY BOND PROGRAM; AND
11 FOR OTHER PURPOSES."

Subtitle

14 "TO AMEND VARIOUS SECTIONS OF ARKANSAS CODE §21-2-701, ET
15 SEQ. RELATING TO THE SELF-INSURED FIDELITY BOND PROGRAM."

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

19 SECTION 1. Arkansas Code § 21-2-702 is hereby amended to read as
20 follows:

21 "21-2-702. Definitions. As used in this subchapter, unless the context
22 otherwise requires:

- 23 (1) _State_ means the State of Arkansas;
- 24 (2) _County_ or _counties_ means the county or counties of the State of
25 Arkansas;
- 26 (3) _Municipal_, _municipality_, or _municipalities_ refers to or means
27 the municipalities of the State of Arkansas;
- 28 (4) _School district_ or _school districts_ means the school districts
29 of the State of Arkansas;
- 30 (5) _State officers and employees_ means all elected and appointed
31 salaried officials of the state and their salaried state employees, the
32 salaried officials and salaried employees of all state boards and commissions,
33 members of the General Assembly and nonsalaried appointed members of the
34 various state boards and commissions;
- 35 (6) _State public official_ or _state public employee_ means any

1 elected or appointed salaried officer of the State of Arkansas and the
2 salaried governmental employees of that elected or appointed officer, members
3 of the General Assembly and the nonsalaried members of the various state
4 boards and commissions;

5 (7) County public official or county public employee means any
6 elected officer of the counties and the employees or deputies of any elected
7 officer, members of the quorum court and the members of the various county
8 boards and commissions, excluding officials and employees of county hospitals,
9 county nursing homes, and conservation and improvement districts;

10 (8) Municipal public official or municipal public employee means
11 any elected officer of the municipalities and the employees or deputies of any
12 elected officer, specifically including salaried municipal employees of
13 municipally owned utilities, members of the city council including the mayor
14 and the members of the various municipal boards and commissions, but excluding
15 officials and employees of municipal hospitals, nursing homes, and improvement
16 districts;

17 (9) School district public official or school district public
18 employee means all school district salaried officials and salaried school
19 district employees, whether elected or appointed, and the members of local
20 school boards of directors;

21 (10) Commissioner means the Insurance Commissioner of the State of
22 Arkansas;

23 (11) Money means currency, coins and bank notes in current use and
24 having a face value, travelers checks, register checks and money orders held
25 for sale to the general public;

26 (12) Securities means negotiable and non-negotiable instruments or
27 contracts representing either money or other property and includes:

28 (A) Tokens, tickets, revenue and other stamps in current use
29 whether represented by actual stamps or unused value in a meter; and

30 (B) Evidences of debt, other than money, issued in connection
31 with credit or charge cards; and

32 (13) Property other than money and securities means any tangible
33 property, other than money and securities, that has intrinsic value."

34

35 SECTION 2. Arkansas Code 21-2-704 is hereby amended to read as follows:

1 "21-2-704. Establishment - Scope of coverage.

2 (a) There is established a self-insured Fidelity Bond Program for state
3 officials and employees, county officials and employees, municipal officials
4 and employees, and school district officials and employees, as defined in
5 21-2-702, to be administered by the Governmental Bonding Board.

6 (b) The fidelity bond coverage provided by the self-insured Fidelity
7 Bond Program shall cover actual losses sustained by the participating
8 governmental entities as defined in 21-2-702 through any fraudulent or
9 dishonest act or acts committed by any of the officials or employees, acting
10 alone or in collusion with others, during the bond period to an amount not
11 exceeding three hundred thousand dollars (\$300,000) per occurrence. Coverage
12 for loss of property other than money and securities shall be limited to the
13 actual cash value of the property on the day the loss was discovered.

14 (c) This coverage shall not include compensatory, punitive, or
15 exemplary damages, and no interest or penalty amounts shall accrue on bond
16 claims made pursuant to this subchapter including, but not limited to,
17 investigative expenses, legal fees, or court costs.

18 (d) The fidelity bond coverage provided by the self-insured Fidelity
19 Bond Program shall not cover losses sustained by the participating
20 governmental entities as a result of:

21 (1) Liability imposed upon or assumed by the participating
22 governmental entities to exonerate or indemnify an official or employee from
23 or against liability incurred by the official or employee in the performance
24 of duties; or

25 (2) Damages for which the participating governmental entity is
26 legally liable as a result of:

27 (A) The deprivation or violation of the civil rights of any
28 person by an official or employee; or

29 (B) The tortious conduct of an official or employee, except
30 conversion of property of other parties held by the participating governmental
31 entity in any capacity; or

32 (3) Loss of property other than money and securities unless the
33 participating governmental entity or the Division of Legislative Audit shall
34 be able to designate the specific official or employee causing such loss.

35 (e) Fidelity bond coverage shall not cover losses sustained by any

1 party other than the participating governmental entities.

2 (f) Except as provided in subdivision (d)(3) of this section, in case
3 of a loss alleged to have been caused to a participating governmental entity
4 through any fraudulent or dishonest act or acts by an official or employee
5 covered under the fidelity bond coverage afforded under the provisions of this
6 subchapter, and the participating governmental entity or the Division of
7 Legislative Audit shall be unable to designate the specific official or
8 employee causing the loss, the participating governmental entity shall
9 nevertheless have the benefit of fidelity bond coverage."

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11 SECTION 3. Arkansas Code § 21-2-708 is hereby amended by adding a new
12 subsection (d) to read as follows:

13 "(d) For purposes of obtaining restitution as provided in subsection
14 (c) of this section, the Fidelity Bond Program and the participating
15 governmental entity shall be deemed victims. In any criminal prosecution
16 against the official or employee causing the loss, where such official or
17 employee enters a plea of guilty or nolo contendere, or, where such official
18 or employee is found guilty following a trial, restitution shall be awarded to
19 the participating governmental entity for the entire amount of its
20 unreimbursed losses and to the Fidelity Bond Program for the entire amount of
21 its payment to the participating governmental entity."

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23 SECTION 4. Arkansas Code 21-2-709 is hereby amended to read as follows:

24 "21-2-709. Determination of coverage - Assignment of rights.

25 (a) Upon the receipt of the proof of loss from the Legislative Auditor,
26 the board shall determine whether the loss is covered under the Fidelity Bond
27 Program. If the board determines that the loss is covered under the Fidelity
28 Bond Program, the Insurance Commissioner shall authorize fidelity bond loss
29 payments from the fund to the participating governmental entity on a timely
30 basis. All vouchers for bond claim payments shall include as supporting
31 documents a copy of the payment recommendation by the State Risk Manager and a
32 copy of the proof of loss from the Legislative Auditor. Any loss payment may
33 be adjusted by any applicable deductibles, restitution or coinsurance
34 payments.

35 (b) Upon fidelity bond loss payment from the fund, the recipients of

1 the loss payment shall, to the extent of the payment, assign to the fund all
2 rights and claims that they may have against the official, officer, or
3 employee involved. The fund shall be subrogated to all of the rights of the
4 recipients of the fidelity bond loss payment to the extent of the payment. If
5 the participating governmental entity shall sustain any loss which exceeds the
6 amount of indemnity provided by the Fidelity Bond Program, the governmental
7 entity shall be entitled to all recoveries (except from suretyship, insurance,
8 reinsurance, security or indemnity taken by or for the benefit of the Fidelity
9 Bond Program) by whomever made, on account of such loss until fully
10 reimbursed, less the amount of the deductible and coinsurance; and any
11 remainder shall be applied to reimbursement of the Fidelity Bond Program. If
12 a participating governmental entity fails to pay over amounts due the Fidelity
13 Bond Program under these provisions, the Fidelity Bond Board may, at its
14 discretion, deduct any amounts due from future bond loss payments due the
15 applicable participating governmental entity or from any Treasury Funds of the
16 applicable participating governmental entity.

17 (c) The Insurance Commissioner shall timely notify the Legislative
18 Auditor if the board determines that the loss is not covered under the
19 Fidelity Bond Program."
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21 SECTION 5. All provisions of this act of a general and permanent nature
22 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
23 Revision Commission shall incorporate the same in the Code.
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25 SECTION 6. If any provision of this act or the application thereof to
26 any person or circumstance is held invalid, such invalidity shall not affect
27 other provisions or applications of the act which can be given effect without
28 the invalid provision or application, and to this end the provisions of this
29 act are declared to be severable.
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31 SECTION 7. All laws and parts of laws in conflict with this act are
32 hereby repealed.
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