

1 **State of Arkansas**
2 **79th General Assembly**
3 **Regular Session, 1993**

A Bill

HOUSE BILL 1615

4 **By: Representatives M. Wilson, Pollan, and Arnold**

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For An Act To Be Entitled

8 "AN ACT TO INCREASE WORKERS COMPENSATION BENEFITS FOR
9 EMPLOYEES AND TO SUBSTANTIALLY *RESTRUCTURE* THE WORKERS
10 COMPENSATION LAWS TO DECREASE COSTS TO EMPLOYERS;
11 INCLUDING ASPECTS OF THE INITIATIVE BY INSURANCE
12 COMMISSIONER DOUGLASS AND PROPOSALS OF AN AD HOC STUDY
13 COMMITTEE APPOINTED BY THE JOINT INTERIM COMMITTEE ON
14 INSURANCE AND COMMERCE; THE SAME BEING ARKANSAS CODE
15 SECTIONS 11-9-101 THROUGH 11-9-911; AND FOR OTHER
16 PURPOSES."

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18

Subtitle

19 "AMENDING THE WORKERS COMPENSATION LAW TO INCREASE
20 BENEFITS AND *RESTRUCTURE* THE SYSTEM TO MAKE IT MORE COST
21 EFFECTIVE."

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

25

26 *SECTION 1. Arkansas Code §11-9-101 is amended to read as follows:*

27 *"11-9-101. Title.*

28 *(A) This chapter shall be cited as the Workers Compensation Law.*

29 *(B) The primary purposes of the workers_ compensation laws are to pay*
30 *timely temporary and permanent disability benefits to all legitimately injured*
31 *workers that suffer an injury or disease arising out of and in the course of*
32 *their employment, to pay reasonable and necessary medical expenses resulting*
33 *therefrom and then to return the worker to the workforce, and to improve*
34 *workplace safety through safety programs; improve health care delivery through*
35 *use of managed care concepts; encourage the return to work of injured workers;*

1 deter and punish frauds of agents, brokers, solicitors, employers and
2 employees relating to procurement of workers' compensation coverage or the
3 provision or denial of benefits; curtail the rise in medical costs associated
4 with the provision of workers_ compensation benefits; and emphasize that the
5 workers_ compensation system in this state must be returned to a state of
6 economic viability.

7 (C) Any and all case law inconsistent with the purposes set forth
8 herein is specifically annulled."

9

10 SECTION 2. Arkansas Code §11-9-102 is amended to read as follows:

11 "11-9-102. Definitions.

12 As used in this chapter, unless the context otherwise requires:

13 (1) Carrier means any stock company, mutual company, or reciprocal or
14 interinsurance exchange authorized to write or carry on the business of
15 workers' compensation insurance in this state; whenever required by the
16 context, the term carrier shall be deemed to include duly qualified
17 self-insureds or self-insured groups;

18 (2) Child means a natural child, a posthumous child, a child legally
19 adopted prior to injury of the employee, a stepchild, an acknowledged
20 illegitimate child of the deceased or spouse of the deceased, and a foster
21 child;

22 (3) Commission means the Workers_ Compensation Commission;

23 (4) Insurance Commissioner means the Insurance Commissioner of the
24 State of Arkansas;

25 (5) (A) (1) Compensable Injury means:

26 (a) An accidental injury causing internal or external physical
27 harm to the body, or accidental injury to prosthetic appliances, including
28 eyeglasses, contact lenses or hearing aids, arising out of and in the course
29 of employment and which, requires medical services or results in disability or
30 death. An injury is accidental only if it is caused by a specific incident
31 and is identifiable by time and place of occurrence.

32 (b) An injury causing internal or external physical harm to the
33 body, and arising out of and in the course of employment if it is not caused
34 by a specific incident or is not identifiable by time and place of occurrence,
35 if the injury is:

1 (i) caused by rapid repetitive motion. Carpal tunnel
2 syndrome is specifically categorized as a compensable injury falling within
3 this definition.

4 (ii) a back injury which is not caused by specific incident
5 or which is not identifiable by time and place of occurrence.

6 (iii) hearing loss which is not caused by specific incident
7 or which is not identifiable by time and place of occurrence.

8 (c) Mental illness as set out in 11-9-113.

9 (d) Heart, cardiovascular injury, accident or disease as set out
10 in 11-9-114.

11 (e) A hernia as set out in 11-9-523.

12 (2) A compensable injury must be established by medical evidence,
13 supported by objective findings as defined in § 11-9-102.

14 (3) Burden of proof

15 The burden of proof of a compensable injury shall be on the employee and
16 shall be as follows:

17 (a) for injuries falling within the definition of compensable
18 injury under paragraph 5(A)(1)(a) the burden of proof shall be a preponderance
19 of the evidence.

20 (b) for injuries falling within the definition of compensable
21 injury under paragraph 5(A)(1)(b) the burden of proof shall be by a
22 preponderance of the evidence and the resultant condition is compensable only
23 if the alleged compensable injury is the major cause of the disability or need
24 for treatment.

25 (4) Benefits

26 (a) When an employee is determined to have a compensable injury,
27 the employee is entitled to medical and temporary disability as provided by
28 Arkansas Workers_ Compensation Law.

29 (b) Permanent benefits shall be awarded only upon a determination
30 that the compensable injury was the major cause of the disability or
31 impairment. If any compensable injury combines with a pre-existing disease or
32 condition or the natural process of aging to cause or prolong disability or a
33 need for treatment, permanent benefits shall be payable for the resultant
34 condition only if the compensable injury is the major cause of the permanent
35 disability or need for treatment.

1 (c) Under 5(A)(4) benefits shall not be payable for a condition
2 which results from a non-work related independent intervening cause following
3 a compensable injury which causes or prolongs disability or a need for
4 treatment. A non-work related independent intervening cause does not require
5 negligence or recklessness on the part of a claimant.

6 (d) Nothing in this section shall limit the payment of
7 rehabilitation benefits or benefits for disfigurement as set forth in this
8 act.

9 (B) Compensable injury does not include:

10 (i) Injury to any active participant in assaults or combats
11 which, although they may occur in the workplace, are the result of
12 non-employment-related hostility or animus of one, both, or all of the
13 combatants, and which said assault or combat amounts to a deviation from
14 customary duties; further, except for innocent victims, injuries caused by
15 horseplay shall not be considered to be compensable injuries;

16 (ii) Injury incurred while engaging in or performing, or as the
17 result of engaging in or performing, any recreational or social activities for
18 the employee's personal pleasure;

19 (iii) Injury which was inflicted upon the employee at a time when
20 employment services were not being performed, or before the employee was hired
21 or after the employment relationship was terminated;

22 (iv) Injury where the accident was substantially occasioned by
23 the use of alcohol, illegal drugs or prescription drugs used in contravention
24 of physician's orders. The presence of alcohol, illegal drugs or prescription
25 drugs used in contravention of a physician's orders shall create a rebuttable
26 presumption that the injury or accident was substantially occasioned by the
27 use of alcohol, illegal drugs or prescription drugs used in contravention of
28 physician's orders; every employee is deemed by his performance of services to
29 have impliedly consented to reasonable and responsible testing by properly
30 trained medical or law enforcement personnel for the presence of any of the
31 aforementioned substances in the employee's body; an employee shall not be
32 entitled to compensation unless it is proved by a preponderance of the
33 evidence that the alcohol, illegal drugs or prescription drugs utilized in
34 contravention of the physician's orders did not substantially occasion the
35 injury or accident.

1 (C) Any and all prior decisions by the Commission and the Courts
2 inconsistent with the definition of compensable injury as herein set forth are
3 hereby specifically annulled, repealed, and held for naught.

4 (D) The definition of compensable injury as set forth hereinabove
5 shall not be deemed to limit or abrogate the right to recover for mental
6 injuries as set forth in Arkansas Code §11-9-113 or occupational diseases as
7 hereinafter set forth at Arkansas Code §11-9-601.

8 (6) Compensation means the money allowance payable to the employee or
9 to his dependents and includes the allowances provided for in §11-9-509 and
10 funeral expense;

11 (7) Death means only death resulting from compensable injury, as
12 defined in subdivision (5) of this section;

13 (8) Department means the Arkansas Insurance Department;

14 (9) Disability means incapacity because of compensable injury to
15 earn, in the same or any other employment, the wages which the employee was
16 receiving at the time of the compensable injury;

17 (10) Employee means any person, including a minor, whether lawfully
18 or unlawfully employed in the service of an employer under any contract of
19 hire or apprenticeship, written or oral, expressed or implied; but excluding
20 one whose employment is casual and not in the course of the trade, business,
21 profession, or occupation of his employer, and excluding one who is required
22 to perform work for a municipality, county or the state or federal government
23 upon being convicted of a criminal offense or while incarcerated. The term
24 employee shall also include a sole proprietor or a partner who devotes full
25 time to the proprietorship or partnership. Further, however, it is to be
26 understood that any sole proprietor or partner of a partnership who desires
27 not to be included in the definition of employee may file for and receive a
28 Certification of Non-Coverage Under the Workers' Compensation Act from the
29 commission and thereafter, or until he or they elect(s) otherwise, be
30 conclusively presumed not to be an employee for purposes of the act. No
31 election by sole proprietor or partnership under this section shall affect the
32 rights or the coverage under this act of any employees of those sole
33 proprietors or partners. Any reference to an employee who has been injured,
34 when that employee is dead, shall also include his legal representative,
35 dependents, and other persons to whom compensation may be payable;

1 (11) Employer means any individual, partnership, association, or
2 corporation carrying on any employment, the receiver or trustee of the same,
3 or the legal representative of a deceased employer;

4 (12) Employment means:

5 (A) Every employment in the state in which three (3) or more
6 employees are regularly employed by the same employer in the course of
7 business, except:

8 (i) An employee employed as a domestic servant in or about
9 a private home;

10 (ii) An employee employed to do gardening, maintenance,
11 repair, remodeling or similar work in or about the private home of the person
12 employing the employee;

13 (iii) Agricultural farm labor;

14 (iv) The State of Arkansas and each of the political
15 subdivisions thereof, except as provided by §§ 6-17-1401 - 6-17-1405,
16 14-26-101 - 14-26-104, 14-60-101 - 14-60-104, 19-10-101 - 19-10-103, 19-10-202
17 - 19-10-210, 19-10-401 - 19-10-406, and 21-5-601 - 21-5-610;

18 (v) A person for whom a rule of liability for injury or
19 death arising out of and in the course of employment is provided by the laws
20 of the United States;

21 (vi) A person performing services for any non-profit
22 religious, charitable or relief organization;

23 (vii) Any person engaged in the vending, selling, offering
24 for sale, or delivery directly to the general public of any newspapers,
25 magazines, or periodicals, or any person acting as sales agent or distributor
26 as an independent contractor of or for any newspaper, magazine, or periodical;

27 (B) Every employment in which two (2) or more employees are
28 employed by any person engaged in building or building repair work;

29 (C) Every employment in which one (1) or more employees are
30 employed by a contractor who subcontracts any part of his contract;

31 (D) Every employment in which one (1) or more employees are
32 employed by a subcontractor.

33 (13) Healing period means that period for healing of an injury
34 resulting from an accident;

35 (14) 'Major cause' means more than fifty percent (50%) of the cause. A

1 finding of major cause shall be established according to the preponderance of
2 the evidence;

3 (15) *_Medical services_ means those services specified in §11-9-508;*

4 (16) *_Objective findings_ are those findings which cannot come under the*
5 *voluntary control of the patient. When determining physical or anatomical*
6 *impairment, neither a physician (or any other medical provider) nor an*
7 *Administrative Law Judge, the Workers' Compensation Commission or the Courts*
8 *may consider complaints of pain; for the purpose of making physical or*
9 *anatomical impairment ratings to the spine, straight leg raising tests or*
10 *range of motion tests shall not be considered objective findings. Medical*
11 *opinions addressing compensability and permanent impairment must be stated*
12 *within a reasonable degree of medical certainty;*

13 (17) *_State average weekly wage_ means the state average weekly wage*
14 *determined annually by the Director of the Department of Labor in the*
15 *preceding calendar year pursuant to §11-10-502. If for any reason, the*
16 *determination is not available, the commission shall determine the wage*
17 *annually, after reasonable investigation and public hearing;*

18 (18) *_Time of accident_ or _date of accident_ means the time or date of*
19 *the occurrence of the accidental incident from which compensable injury,*
20 *disability, or death results;*

21 (19) *_Wages_ means the money rate at which the service rendered is*
22 *recompensed under the contract of hiring in force at the time of the accident*
23 *including reasonable value of board, rent, housing, lodging, or similar*
24 *advantage received from the employer and includes the amount of tips required*
25 *to be reported by the employer pursuant to section 6053 of the Internal*
26 *Revenue Code of 1954, as amended, and the regulations promulgated pursuant*
27 *thereto, or the amount of actual tips reported, whichever amount is greater;*

28 (20) *_Widow_ shall include only the decedent's legal wife, living with*
29 *or dependent for support upon him at the time of his death;*

30 (21) *_Widower_ shall include only the decedent's legal husband, living*
31 *with or dependent for support upon her at the time of her death."*

32

33 SECTION 3. Arkansas Code §11-9-707(4) is hereby repealed.

34

35 SECTION 4. Arkansas Code §11-9-105(a) is amended to read as follows:

1 "(a) The rights and remedies granted to an employee subject to the
2 provisions of this chapter, on account of injury or death, shall be exclusive
3 of all other rights and remedies of the employee, his legal representative,
4 dependents, next of kin, or anyone otherwise entitled to recover damages from
5 the employer, or any principal, officer, director, stockholder, or partner
6 acting in their capacity as an employer, or prime contractor of the employer,
7 on account of the injury or death, and the negligent acts of a co-employee
8 shall not be imputed to the employer. No role, capacity, or persona of any
9 employer, principal, officer, director or stockholder other than that existing
10 in the role of employer of the employee shall be relevant for consideration
11 for purposes of the act, and the remedies and rights provided by this chapter
12 shall in fact be exclusive regardless of the multiple roles, capacities or
13 personas the employer may be deemed to have."
14

15 SECTION 5. Arkansas Code §11-9-106 is amended to read as follows:

16 "11-9-106. Penalties for misrepresentation.

17 (a) Any person or entity who willfully and knowingly makes any material
18 false statement or representation for the purpose of obtaining any benefit or
19 payment, or for the purpose of defeating or wrongfully increasing or
20 wrongfully decreasing any claim for benefit or payment or obtaining or
21 avoiding workers' compensation coverage or avoiding payment of the proper
22 insurance premium (or who aids and abets for either of said purposes), under
23 this chapter shall be guilty of a Class D felony.

24 (b) A copy of subsection (a) of this section shall be placed on all
25 forms prescribed by the commission for the use of injured employees claiming
26 benefits, and for the use of employers in responding to such employees'
27 claims, under the Arkansas Workers' Compensation Law, §11-9-101 et seq.

28 (c) Where the commission or the insurance commissioner finds that false
29 or misleading statements or representations were made willfully and knowingly
30 for the purpose of obtaining benefits or payments, or for the purpose of
31 obtaining, wrongfully increasing, wrongfully decreasing or defeating any claim
32 for benefit or payment or obtaining or avoiding workers' compensation coverage
33 or avoiding payment of the proper insurance premium, under this chapter, the
34 chairman of the commission and/or the insurance commissioner shall refer the
35 matter for appropriate action to the prosecuting attorney of the district

1 where the original hearing was held.

2 (d) (1) There shall be established within the Arkansas Insurance
3 Department a Workers_ Compensation Fraud Investigation Unit_, funded by the
4 Workers_ Compensation Commission, which will be headed and supervised by a
5 director who shall have no fewer than three (3) years experience in law
6 enforcement, or alternatively a law degree, who shall, in turn report to and
7 be subject to the supervision of the Insurance Commissioner. The Workers_
8 Compensation Fraud Investigation Unit herein designated will specifically deal
9 only with Workers_ Compensation Fraud. Such employees hired to pursue the
10 purposes of the Workers_ Compensation Fraud Investigation Unit will be
11 utilized solely for workers_ compensation investigation and no other purposes.

12 (2) The Insurance Commissioner, his deputies and assistants and
13 the fraud director and his deputy shall be vested with the power of enforcing
14 this section and to render more effective the disclosure and apprehension of
15 persons or entities who abuse the workers_ compensation system as established
16 by the General Assembly by making false or misleading statements for the
17 purpose of either obtaining, wrongfully increasing, wrongfully decreasing or
18 defeating the payment of benefits or obtaining or avoiding workers'
19 compensation coverage or avoiding payment of the proper insurance premium.

20 (3) It shall be the duty of the Workers_ Compensation Fraud
21 Investigation Unit to assist the Insurance Commissioner and the department in
22 the performance of their duties, and further, to:

23 (A) Determine the identity of either carriers, employers
24 or employees who, within the State of Arkansas have violated the provisions of
25 A.C.A. 11-9-409 and subdivisions (a), (b) and/or (c) of this section, and to
26 report same to the Workers_ Compensation Commission and to the Insurance
27 Commissioner, who shall, in turn, be responsible for reporting same to the
28 prosecuting attorney of the district in which the offender resides.

29 (B) With respect to the subject of any investigation or
30 hearing being conducted by the Workers_ Compensation Commission, the Insurance
31 Commissioner, his deputies and assistants, and the director and his deputies
32 shall have the power of subpoena and may subpoena witnesses and administer
33 oaths or affirmations and examine any individual under oath and may require
34 and compel the production of records, books, papers, contracts and other
35 documents.

1 (4) Witness fees, mileage, and the actual expense necessarily
2 incurred in securing attendance of witnesses and their testimony shall be
3 itemized and shall be paid by the person being examined or investigated if, in
4 the proceedings in which the witness is called, the person is found to have
5 been in violation of the law, or paid by the person, if other than the
6 Workers_ Compensation Commission, Insurance Commissioner or fraud director, at
7 whose request the hearing is held. In addition, the prevailing party shall be
8 entitled to recover costs and a reasonable attorney's fee payable from the
9 fine; provided however, if the employee is the nonprevailing party, the
10 attorney's fee and costs shall, at the election of the employer, be paid by
11 the employee or deducted from future worker's compensation benefits.

12 (5) Subpoenas of witnesses shall be served in the same manner as
13 if issued by a circuit court.

14 (A) If any individual fails to obey a subpoena issued and
15 served pursuant to this section with respect to any matter concerning which he
16 may be lawfully interrogated, upon application of the Insurance Commissioner
17 or Fraud Director, the circuit court of the county in which is pending the
18 proceeding at which the individual was required to appear, may issue an order
19 requiring the individual to comply with the subpoena and to testify.

20 (B) Any failure to obey the order of the court may be
21 punished by the court as a contempt thereof.

22 (6) If any person has refused, in connection with an
23 investigation by the fraud director, to be examined under oath concerning his
24 affairs, then the Fraud Director is authorized to conduct and enforce by all
25 appropriate and available means any examination under oath in any state or
26 territory of the United States to which any officer, director, or manager may
27 then presently be to the full extent permitted by the laws of the state or
28 territory.

29 (7) Any person testifying falsely under oath or affirmation in
30 this state as to any matter material to any investigation or hearing
31 conducted, pursuant, hereto or any workers_ compensation hearing shall, upon
32 conviction be guilty of perjury and punished accordingly.

33 (8) Every carrier, or employer who has reason to suspect that a
34 violation of A.C.A. 11-9-106(a) has occurred shall be required to report all
35 pertinent matters relating thereto to the Workers_ Compensation Fraud

1 Investigation Unit. No such carrier shall be liable to any employer or
2 employee for any such report, and no employer shall be liable to any employee
3 for such a report unless they knowingly and intentionally include false
4 information. Any such carrier or employer who knowingly and intentionally
5 fails to report any such violation shall be guilty of a misdemeanor and on
6 conviction shall be punished by fine not to exceed one thousand dollars
7 (\$1,000) or by imprisonment, for a period not to exceed one (1) year, or by
8 both fine and imprisonment; although not mandated to report suspected
9 violations of A.C.A. 11-9-106(a) by an employer or employee, any employee who
10 does make such a report shall not be liable to the employer or employee whose
11 suspected violations he has reported.

12 (9) For the purpose of imposing criminal sanctions or a fine for
13 violation of the duties of this act, the prosecuting attorney shall have the
14 right and discretion to proceed against any person or organization responsible
15 for such violations, both organizational and individual liability being
16 intended by this act. Nothing herein shall be deemed to create a civil cause
17 of action.

18 (10) The prosecuting attorney of the district where the original
19 hearing is held and to whom a suspected violation of A.C.A. 11-9-106(a), 11-9-
20 402(c), and 11-9-406 has been referred shall, for the purpose of assisting him
21 in such prosecutions, have the authority to appoint as special assistant
22 prosecuting attorneys licensed attorneys at law in the employment of the
23 Insurance Department Workers_ Compensation Fraud Investigation Unit. Such
24 special assistant prosecuting attorneys shall, for the purpose of the
25 prosecutions to which they are assigned, be responsible to and report to the
26 prosecuting attorney.

27 (11) The Insurance Commissioner, with the cooperation and
28 assistance of the Workers_ Compensation Commission, is authorized to establish
29 such rules and regulations as may be necessary to carry out the provisions of
30 this section.

31 (12) Notwithstanding any other provision of law, it is the
32 specific intent of this section that active investigatory files as maintained
33 by the Insurance Department and by the Workers_ Compensation Fraud
34 Investigation Unit be deemed confidential and privileged and not be made open
35 to the public until the matter under investigation is closed by the Fraud

1 Director with the consent of the Insurance Commissioner.

2 (13) It is to be understood that any person or entity with whom
3 any person identified in section 11-9-106(a) hereinabove has conspired to
4 achieve the proscribed ends shall, by reason of such conspiracy, be guilty as
5 a principal of a Class D felony."

6

7 SECTION 6. Arkansas Code Ann. 11-9-107 is amended to read as follows:

8 "11-9-107. Penalties for discrimination for filing claim.

9 Any employer who willfully discriminates in regard to the hiring or
10 tenure of work or any term or condition of work of any individual on account
11 of the individual_s claim for benefits under this chapter, or who in any
12 manner obstructs or impedes the filing of claims for benefits under this
13 chapter shall be subject to a fine of up to ten thousand dollars (\$10,000) as
14 determined by the Workers_ Compensation Commission. This fine shall be
15 payable to the Workers_ Compensation Commission Second Injury Fund and paid by
16 the employer and not by the carrier. In addition, the prevailing party shall
17 be entitled to recover costs and a reasonable attorney_s fee payable from the
18 fine; provided however, if the employee is the nonprevailing party, the
19 attorney_s fee and costs shall, at the election of the employer, be paid by
20 the employee or deducted from future workers_ compensation benefits. The
21 employer may also be guilty of a Class D felony. This section shall not be
22 construed as establishing an exception to the _employment at will doctrine_.
23 A purpose of this section is to preserve the exclusive remedy doctrine and
24 specifically annul any case law inconsistent herewith, including but not
25 necessarily limited to: Wal Mart Stores, Inc., vs. Baysinger, 306 Ark.
26 239,812 SW2d 463 (1991); Mapco, Inc. vs. Paine, 306 Ark. 198, 812 SW2d 483 2d
27 (1991); and Thomas vs. Valmac Industries, 306 Ark. 228, 812 SWd 673 (1991)."

28

29 SECTION 7. Arkansas Code Section 11-9-109 is amended to read as
30 follows:

31 "11-9-109. Agreement to pay premium void.

32 (a) No agreement by an employee to pay any portion of the premium paid
33 by his employer to a carrier or to contribute to a safety program as provided
34 under Section 13 of this act, a benefit fund or department maintained by the
35 employer for the purpose of providing compensation or medical services and

1 supplies as required by this chapter shall be valid.

2 (b) Any employer who makes a deduction for those purposes from the pay
3 of any employee entitled to the benefits of this chapter shall be guilty of a
4 Class D felony."

5

6 SECTION 8. Subchapter 1 of Chapter 9 of Title 11 of the Arkansas Code
7 is amended by adding three new sections at the end thereof to read as follows:

8 "11-9-113. (a) A mental injury or illness is not a compensable injury
9 unless it is caused by physical injury to the employee's body and shall not be
10 considered an injury arising out of and in the course of employment or
11 compensable unless it is demonstrated by a preponderance of the evidence;
12 provided, however, that this physical injury limitation shall not apply to any
13 victim of a crime of violence. No mental injury or illness under this section
14 shall be compensable unless it is also diagnosed by a licensed psychiatrist or
15 psychologist and the diagnosis of the condition meets the criteria established
16 in the most current issue of the Diagnostic and Statistical Manual of Mental
17 Disorders.

18 (b) Notwithstanding any other provision of this chapter, where a claim
19 is by reason of mental injury or illness the employee shall be limited to
20 twenty-six (26) weeks of disability benefits. In case death results directly
21 from the mental injury or illness within a period of one (1) year,
22 compensation shall be paid the dependents as provided in other death cases
23 under this chapter. Death directly or indirectly related to the mental injury
24 or illness occurring one (1) year or more from the incident resulting in the
25 mental injury or illness shall not be a compensable injury.

26 11-9-114. (a) A cardiovascular, coronary, pulmonary, respiratory or
27 cerebrovascular accident, or myocardial infarction causing injury, illness or
28 death is a compensable injury only if in relation to other factors
29 contributing to the physical harm an accident is the major cause of the
30 physical harm;

31 (b) An injury or disease included in subsection (a) shall not be deemed
32 to be a compensable injury unless it is shown that the exertion of the work
33 necessary to precipitate the disability or death was extraordinary and unusual
34 in comparison to the employee's usual work in the course of the employee's
35 regular employment, or alternately, that some unusual and unpredicted incident

1 occurred which is found to have been the major cause of the physical harm.
2 Stress (physical or mental) shall not be considered in determining whether the
3 employee or claimant has met his burden of proof."
4

5 SECTION 9. Arkansas Code §11-9-401(a) is hereby amended to read as
6 follows:

7 "(a) (1) (A) Every employer should secure compensation to its employees
8 and pay or provide compensation for their disability or death from compensable
9 injury arising out of and in the course of employment without regard to fault
10 as a cause of the injury.

11 (B) There shall be no liability for compensation under this chapter
12 where the injury or death was substantially occasioned by the willful
13 intention of the injured employee to bring about such compensable injury or
14 death."
15

16 SECTION 10. Arkansas Code §11-9-402 is amended to read as follows:

17 "11-9-402. Liability of prime contractors and subcontractors - Sole
18 proprietorships or partnerships.

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

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

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

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

32 (c) (1) When a sole proprietorship or partnership fails to elect to
33 cover the sole proprietor or partners under this chapter, the prime contractor
34 is not liable under this chapter for injuries sustained by the sole proprietor
35 or partners if the sole proprietor or partners are not employees of the prime

1 contractor. A sole proprietor or the partners of a partnership who do not
2 elect to be covered by the Workers_ Compensation Law and be deemed _employees_
3 thereunder and who deliver to the prime contractor a _Certificate of
4 Non-Coverage_ issued by the Workers' Compensation Commission shall be
5 conclusively presumed not to be covered by the law or to be _employees_ of the
6 prime contractor; this provision shall not affect the rights or coverage of
7 any employees of the sole proprietor or of the partnership.

8 (2) Furthermore, the prime contractor's insurance carrier is not
9 liable for injuries to the sole proprietor or partners described above, who
10 have provided a Certification of Non-Coverage, and the carrier shall not
11 include compensation paid by the prime contractor to the sole proprietor or
12 partners described above in computing the insurance premium for the prime
13 contractor. Any prime contractor who, after being presented with a
14 Certification of Non-Coverage by a sole proprietor or partnership, nonetheless
15 compels the sole proprietorship or partnership to pay or contribute to
16 workers_ compensation coverage of that sole proprietor or partnership shall be
17 guilty of a Class D felony; further, any prime contractor who compels a sole
18 proprietor or partnership to obtain a Certification of Non-Coverage when the
19 sole proprietor or partnership does not desire to do so, is guilty of a Class
20 D felony."

21

22 SECTION 11. Arkansas Code §11-9-406 is amended to read as follows:

23 "11-9-406. Failure to secure payment of compensation - Penalty.

24 (a) Any employer required to secure the payment of compensation under
25 this chapter who fails to secure compensation shall be subject to a fine of up
26 to ten thousand dollars (\$10,000) as determined by Workers' Compensation
27 Commission payable to the Death and Permanent Total Disability Trust Fund or
28 be guilty of a Class D felony. This subsection shall not affect any other
29 liability of the employer under this act.

30 (b) (1) Whenever the commission has reason to believe that any
31 employer required to secure the payment of compensation under this chapter has
32 failed to do so, the commission shall serve upon such employer a proposed
33 order declaring the employer to be in violation of this chapter and containing
34 the amount, if any, of the civil penalty to be assessed against the employer
35 pursuant to subsection (5) of this section.

1 (2) An employer may contest a proposed order of the commission
2 issued pursuant to subsection (b) of this section by filing with the
3 commission, within twenty (20) days of receipt of the proposed order, a
4 written request for a hearing. If a written request for hearing is not filed
5 with the commission within this time, the proposed order, proposed penalty or
6 both shall be a final order of the commission and shall not be subject to
7 further review by any court. Such a request for a hearing need not be in any
8 particular form, but shall specify the grounds upon which the person contests
9 the proposed order, the proposed assessment or both. A proposed order by the
10 commission pursuant to this section is prima facie correct, and the burden is
11 upon the employer to prove that the proposed order is incorrect.

12 (3) If the employer alleges that a carrier has contracted to
13 provide it workers' compensation insurance coverage for the period in
14 question, the employer shall include such allegation in its request for
15 hearing and shall name the carrier. The commission shall promptly notify such
16 carrier of the employer's allegation and of the date of hearing. The carrier
17 shall promptly, and no later than five (5) days prior to the hearing, respond
18 in writing to the employer's allegation by providing evidence of coverage for
19 the period in question or by affirmatively denying the employer's allegation.

20 (4) Hearings conducted under this section shall proceed as
21 provided in §§ 11-9-704 - 11-9-711.

22 (5) The Commission may assess a fine against an employer who
23 fails to secure the payment of compensation in an amount up to one thousand
24 dollars (\$1,000) per day of violation payable to the Death and Permanent Total
25 Disability Trust Fund.

26 (6) If an employer fails to secure the payment of compensation or
27 pay any civil penalty assessed thereagainst after an order issued pursuant to
28 this section has become final by operation of law or upon appeal, the
29 Commission may petition the Chancery Court of Pulaski County or County where
30 the employer's principal place of business is located for an order enjoining
31 the employer from engaging in further employment until such time as the
32 employer secures the payment of compensation and/or makes full payment of all
33 civil penalties."

34

35 SECTION 12. Arkansas Code §11-9-408 is amended to read as follows:

1 "11-9-408. Insurance policies.

2 (a) Contents. Every policy or contract of insurance issued by a
3 carrier to an employer to secure the payment of compensation under this
4 chapter shall contain:

5 (1) Provisions that identify the insured employer and either
6 identify each covered employee or describe covered employees by class or type
7 of labor performed and the estimated number of employees of each such class or
8 type. No single policy of workers' compensation insurance may be issued to
9 any group of employers who are unaffiliated with one another in terms of
10 ownership, control, or right to participate in the profits of the affiliated
11 enterprises;

12 (2) Provisions that insolvency or bankruptcy of the employer or
13 discharge therein shall not relieve the carrier from payment of compensation
14 for compensable injuries sustained by an employee during the term of the
15 policy or contract;

16 (3) The agreement of the carrier that it will promptly pay to the
17 person entitled to compensation every installment of compensation that may be
18 awarded or agreed upon and that this obligation shall not be affected by any
19 default of the employer or by any default in the giving of any notice required
20 by the policy or otherwise. The agreement shall be construed to be a direct
21 obligation by the carrier to the person entitled to compensation, enforceable
22 in that person's name; and

23 (4) Such other provisions as the department allows or requires
24 carriers to include in workers' compensation policies as otherwise provided at
25 Arkansas Code §23-67-101 et seq.

26 (b) Cancellation.

27 (1) An employer may cancel coverage with a carrier by giving the
28 carrier at least thirty (30) days notice, unless a shorter period is permitted
29 under subdivision (B) of this subsection.

30 (A) Cancellation of coverage is effective at 12:01 a.m.
31 thirty (30) days after the date the cancellation notice is received by the
32 carrier, unless a later date is specified in the notice to the carrier.

33 (B) An employer may cancel coverage effective less than
34 thirty (30) days after written notice is received by the carrier where the
35 employer obtains other coverage or becomes a self-insurer. A cancellation

1 under this subdivision is effective immediately upon the effective date of the
2 other coverage or upon authorization as a self-insurer.

3 (2) A carrier shall not cancel coverage issued to an employer
4 under this chapter prior to the date specified for expiration in the policy or
5 contract or until at least thirty (30) days have elapsed after a notice of
6 cancellation has been mailed to the commission and to the employer, or until
7 ten (10) days have elapsed after the notice has been mailed to the employer
8 and to the commission if the cancellation is for nonpayment of premium. A
9 notice of cancellation from the carrier shall state the hour and date that
10 cancellation is effective. However, if the employer procures other insurance
11 within the notice period, the effective date of the new policy shall be the
12 cancellation date of the old policy.

13 (3) Cancellation of coverage by an employer or a carrier shall in
14 no way limit liability that was incurred under the policy or contract prior to
15 the effective date of cancellation.

16 (c) Coverage. No policy or contract of insurance shall be issued
17 against liability under this chapter unless the policy or contract covers the
18 entire liability of the employer; _split coverage_ whereby some employees of
19 an employer are insured by one carrier and other employees are insured by
20 another carrier (or by the Workers Compensation Insurance Plan or a plan of
21 self insurance) is expressly prohibited; except for (i) a policy issued in
22 accordance with Arkansas Code §23-92-315(3) so long as all employees
23 performing services for a client are covered under the same policy, contract
24 or plan, or (ii) a policy issued covering the liability of an employer or of
25 multiple employers as to specific jobs, ventures, contracts or undertakings
26 but only if such policy meets with the reasonable satisfaction and approval of
27 the commissioner that such policy is in the best interest of the employers and
28 the employees concerned and does not unduly or improperly affect the
29 continuity of workers' compensation coverage by seriously and negatively
30 affecting other carriers and agents with outstanding policies issued to any of
31 the employers in issue. As to any questions of liability between the employer
32 and the carrier, the terms of the policy or contract shall govern.

33 (d) Under such rules and regulations as may be adopted by the Insurance
34 Commissioner, and notwithstanding other provisions of this chapter, the
35 commissioner may certify five (5) or more employers as an insurance group

1 which shall be considered an employer for the purposes of this chapter."
2

3 SECTION 13. Arkansas Code §11-9-409, repealed by Section 4 of Act 561
4 of 1991, is reenacted to read as follows:

5 "11-9-409. Safety and health loss control consultative services.

6 (1) WORKERS' HEALTH AND SAFETY.

7 (a) The Arkansas Workers_ Compensation Commission shall
8 establish a Workers_ Health and Safety Division hereinafter referred to as
9 Division.

10 (b) The Division shall collect and serve as a repository for
11 statistical information on workers' health and safety. In cooperation and
12 with the assistance of the Arkansas Department of Labor and the Arkansas
13 Insurance Department, the Division shall analyze and use the information to
14 identify and assign priorities to safety needs and to better coordinate the
15 safety services provided by public or private organizations, including
16 insurance carriers. In cooperation and with the assistance of the Arkansas
17 Department of Labor and the Arkansas Insurance Department, the Division shall
18 promote workers' health and safety through educational programs and other
19 innovative programs developed by the Division.

20 (c) In cooperation and with the assistance of the Arkansas Department
21 of Labor and the Arkansas Insurance Department, the Division shall coordinate
22 or supervise the collection of information relating to job safety.

23 (d) The Chairman of the Workers' Compensation Commission, the Director
24 of the Arkansas Department of Labor and the Commissioner of the Arkansas
25 Insurance Commission shall function as an advisory committee to resolve
26 questions regarding duplication of efforts, assignment of new programs and
27 other matters that need cooperation and coordination.

28 (e) In cooperation and with the assistance of the Arkansas Department
29 of Labor and the Arkansas Insurance Department, the Division shall publish or
30 procure and issue educational books, pamphlets, brochures, films, videotapes,
31 and other informational and educational material. Specific educational
32 material shall be directed to high-risk industries and jobs and shall
33 specifically address means and methods of avoiding high frequency, but
34 preventable, workers' injuries. Other educational material shall be directed
35 to business and industry generally and shall specifically address means and

1 methods of avoiding common workers' injuries. Specific decisions as to what
2 issues and problems should be addressed by such information shall be made by
3 the Division in cooperation and with the assistance of the Arkansas Department
4 of Labor and the Arkansas Insurance Department, with Commission approval after
5 assigning appropriate priorities based on frequency of injuries, degree of
6 hazard, severity of injuries, and similar considerations. Such educational
7 materials shall include specific references to the requirements of state and
8 federal laws and regulations, to recommendations and practices of business,
9 industry, and trade associations, and where needed, to recommended work
10 practices based on recommendations made by the Division in cooperation and
11 with the assistance of the Arkansas Department of Labor and the Arkansas
12 Insurance Department, for the prevention of injury.

13 (f) In cooperation and with the assistance of the Arkansas Department
14 of Labor and the Arkansas Insurance Department, the Division shall cooperate
15 with employers and employees to develop means and methods of educating
16 employees and employers with regard to workplace safety.

17 (g) In cooperation and with the assistance of the Arkansas Department
18 of Labor and the Arkansas Insurance Department, the Division shall encourage
19 other entities to develop safety courses, safety plans, and safety programs.

20 (h) In cooperation and with the assistance of the Arkansas Department
21 of Labor and the Arkansas Insurance Department, the Division shall certify
22 safe employers to provide peer review safety programs.

23 (i) In cooperation and with the assistance of the Arkansas Department
24 of Labor and the Arkansas Insurance Department, the Division shall advise
25 insurance carrier loss control service organizations of hazard
26 classifications, specific employers, industries, occupations, or geographic
27 regions to which loss control services should be directed or of the identity
28 and types of injuries or occupational diseases for prevention of the same to
29 which loss control services should be directed and shall advise insurance
30 carrier loss control service organizations of safety needs and priorities
31 recommended by the Division in cooperation and with the assistance of the
32 Arkansas Department of Labor and the Arkansas Insurance Department.

33 (2) JOB SAFETY INFORMATION SYSTEM.

34 (a) In cooperation and with the assistance of the Arkansas
35 Department of Labor and the Arkansas Insurance Department, the Division shall

1 establish and maintain a job safety information system. In cooperation and
2 with the assistance of the Arkansas Department of Labor and the Arkansas
3 Insurance Department, the Division is authorized, empowered, and directed to
4 obtain from any state agency, data and statistics, including those compiled
5 for the purpose of rate making. The Division shall consult the Arkansas
6 Department of Labor and any other affected state agencies in the design of
7 data information and retrieval systems that will accomplish the mutual
8 purposes of those agencies and of the Division.

9 (b) Employers shall file with the Commission such reports as may be
10 necessary. The Commission shall promulgate rules and prescribe the form and
11 manner of such reports.

12 (c) The job safety information system shall include a comprehensive
13 data base that incorporates all pertinent information relating to each
14 reported injury.

15 (d) The identity of the employee is confidential and may not be
16 disclosed as part of the job safety information system.

17 (3) EXTRA-HAZARDOUS EMPLOYER PROGRAM.

18 (a) In cooperation and with the assistance of the Arkansas Department
19 of Labor and the Arkansas Insurance Department, the Division shall develop a
20 program including injury frequency to identify extra-hazardous employers.
21 The term extra-hazardous employer includes an employer whose injury
22 frequencies substantially exceed those that may reasonably be expected in that
23 employer's business or industry; an employer whose experience modifier is
24 identified by the commission as too high; and, such other employers as may,
25 following a public hearing, be identified as extra hazardous. The Division
26 shall notify each identified extra-hazardous employer and/or the carrier for
27 the employer that the employer has been identified as an extra-hazardous
28 employer.

29 (b) An employer that receives notification under Subsection (3)(a) of
30 this section must obtain a safety consultation within thirty (30) days from
31 the Arkansas Department of Labor, the employer's insurance carrier, or another
32 professional source approved by the Division for that purpose. The safety
33 consultant shall file a written report with the Division and the employer
34 setting out any hazardous conditions or practices identified by the safety
35 consultation.

1 (c) The employer and the consultant shall formulate a specific
2 accident prevention plan which addresses the hazards identified by the
3 consultant. The employer shall comply with the accident prevention plan.

4 (d) The Division may investigate accidents occurring at the worksites
5 of an employer for whom a plan has been formulated under Subsection (c) of
6 this section, and the Division may otherwise monitor the implementation of the
7 accident prevention plan as it finds necessary.

8 (e) Six (6) months after the formulation of an accident prevention
9 plan prescribed by Subsection (c) of this section, the Division shall conduct
10 a follow-up inspection of the employer_s premises. The Division may require
11 the participation of the safety consultant who performed the initial
12 consultation and formulated the safety plan. If the Division determines that
13 the employer has complied with the terms of the accident prevention plan or
14 has implemented other acceptable corrective measures, the Division shall so
15 certify. An employer whom the Division determines has failed or refused to
16 implement the accident prevention plan or other suitable hazard abatement
17 measures is subject to civil penalties as follows: the Commission may assess
18 a civil penalty against an employer who fails or refuses to implement the
19 accident prevention plan or other suitable hazard abatement procedures in an
20 amount up to One Thousand Dollars (\$1,000.00) per day of violation payable to
21 the Death and Permanent Total Disability Trust Fund. Further, the Commission
22 may petition the Chancery Court of Pulaski County or the county where the
23 business is located for an order enjoining the employer from engaging in
24 further employment until such time as the employer implements the prevention
25 plan or abatement measure described above and/or makes payment of all civil
26 penalties.

27 (f) If, at the time of the inspection required under Subsection (e) of
28 this section, the employer continues to exceed the injury frequencies that may
29 reasonably be expected in that employer_s business or industry, the Division
30 shall continue to monitor the safety conditions at the worksite and may
31 formulate additional safety plans reasonably calculated to abate hazards. The
32 employer shall comply with such plans and may be subject to additional
33 penalties for failure to implement the plan or plans.

34 (g) An employer may request a hearing before the full Commission to
35 contest findings made by the Division under this section.

1 (h) The identification as an extra-hazardous employer under this
2 section is not admissible in any judicial proceeding unless the Commission has
3 determined that the employer is not in compliance with this section and that
4 determination has not been reversed or superseded at the time of the event
5 giving rise to the judicial proceeding.

6 (4) ACCIDENT PREVENTION SERVICES.

7 (a) Any insurance company desiring to write workers_ compensation
8 insurance in Arkansas shall maintain or provide accident prevention services
9 as a prerequisite for a license to write such insurance. Such services shall
10 be adequate to furnish accident prevention programs required by the nature of
11 its policyholders_ operations and shall include surveys, recommendations,
12 training programs, consultations, analyses of accident causes, industrial
13 hygiene, and industrial health services to implement the program of accident
14 prevention services.

15 (b) In cooperation and with the assistance of the Arkansas Department
16 of Labor and the Arkansas Insurance Department, the Division shall conduct
17 inspections to determine the adequacy of the accident prevention services
18 required by Subsection (a) of this section at least every two (2) years for
19 each insurance company writing workers' compensation insurance in Arkansas.

20 (c) Notice that services are available to the policyholder from the
21 insurance company must appear in no less than 10-point bold type on the front
22 of each workers_ compensation insurance policy delivered or issued for
23 delivery in the state.

24 (d) At least once each year each insurance company writing workers'
25 compensation insurance in Arkansas must submit to the Division detailed
26 information on the type of accident prevention services offered to that
27 insurance company_s policyholders. The information must include any
28 additional information required by the Commission.

29 (e) If the insurance company does not maintain or provide the accident
30 prevention services required by this section or if the insurance company does
31 not use the services in a reasonable manner to prevent injury to employees of
32 its policyholders, the insurance company may be subjected to the same civil
33 penalties as are assessable and enforceable against employers as set forth
34 above in Subsection (3)(e) hereof and shall be subject to suspension or
35 revocation of license to do business in this state by the Insurance

1 Commissioner.

2 (f) The Commission shall employ the qualified personnel necessary to
3 enforce this section.

4 (5) IMMUNITY FROM CERTAIN LIABILITY. Except as provided in subsection
5 4(e) above, the insurance company, the agent, servant, or employee of the
6 insurance company or self insured employer, or a safety consultant who
7 performs a safety consultation under Section 13 of this Act shall have no
8 liability with respect to any accident based on the allegation that such
9 accident was caused or could have been prevented by a program, inspection, or
10 other activity or service undertaken by the insurance company or self insured
11 employer for the prevention of accidents in connection with operations of the
12 employer; provided, however, this immunity shall not affect the liability of
13 the insurance carrier or self insured employer for compensation or as
14 otherwise provided in this Act.

15 (6) EXCLUSIVE REMEDY. This section does not create an independent
16 cause of action at law or in equity."

17

18 Section 14. Arkansas Code 11-9-410 is amended to read as follows:

19 "11-9-410. Third party liability.

20 (a) Liability unaffected.

21 (1) The making of a claim for compensation against any employer
22 or carrier for the injury or death of an employee shall not affect the right
23 of the employee, or his dependents, to make claim or maintain an action in
24 court against any third party for the injury, but the employer or his carrier
25 shall be entitled to reasonable notice and opportunity to join in the action.
26 If they, or either of them, join in the action, they shall be entitled to a
27 first lien upon two-thirds (2/3) of the net proceeds recovered in the action
28 that remain after the payment of the reasonable costs of collection, for the
29 payment to them of the amount paid and to be paid by them as compensation to
30 the injured employee or his dependents.

31 (2) The commencement of an action by an employee or his
32 dependents against a third party for damages by reason of an injury to which
33 this chapter is applicable, or the adjustment of any claim, shall not affect
34 the rights of the injured employee or his dependents to recover compensation,
35 but any amount recovered by the injured employee or his dependents from a

1 third party shall be applied as follows:

2 (A) reasonable costs of collection shall be deducted;

3 (B) then, in every case, one-third (1/3) of the remainder
4 shall belong to the injured employee or his dependents, as the case may be;

5 (C) the remainder, or so much as is necessary to discharge
6 the actual amount of the liability of the employer and the carrier; and

7 (D) any excess shall belong to the injured employee or his
8 dependents.

9 (b) Subrogation.

10 (1) An employer or carrier liable for compensation under this
11 chapter for the injury or death of an employee shall have the right to
12 maintain an action in tort against any third party responsible for the injury
13 or death. However, employee or the carrier must notify the claimant in
14 writing that the claimant has the right to hire a private attorney to pursue
15 any benefits that the claimant is entitled to in addition to the subrogation
16 interest against any third party responsible for the injury or death.

17 (2) After reasonable notice and opportunity to be represented in
18 the action has been given to the compensation beneficiary, the liability of
19 the third party to the compensation beneficiary shall be determined in the
20 action as well as the third party_s liability to the employer and carrier.

21 (3) After recovery shall be had against the third party, by suit
22 or otherwise, the compensation beneficiary shall be entitled to any amount
23 recovered over and above the amount that the employer and carrier have paid or
24 are liable for in compensation, after deducting reasonable costs of
25 collection. In no event shall the compensation beneficiary be entitled to
26 less than one-third (1/3) of the amount recovered from the third party, after
27 deducting the reasonable cost of collection.

28 (4) An employer or carrier who is liable for compensation under
29 this chapter on account of injury or death of an employee shall be entitled to
30 maintain a third party action against the employer_s uninsured motorist
31 coverage or underinsured motorist coverage. The purpose and intent of this
32 section is to prevent double payment to the employee. Any and all case law
33 inconsistent herewith is specifically annulled.

34 (c) Settlement of claims.

35 (1) Settlement of claims under subsections (a) and (b) of this

1 section must have the approval of the court or of the commission, except that
2 the distribution of that portion of the settlement which represents the
3 compensation payable under this chapter must have the approval of the
4 commission.

5 (2) Where liability is admitted to the injured employee or his
6 dependents by the employer or carrier, the cost of collection may be deducted
7 from that portion of the settlement under subsections (a) or (b) of this
8 section representing compensation, upon direction and approval of the
9 commission.

10 (3) No party shall settle a claim under subsections (a) and (b)
11 of this section without first giving three (3) days_ written notice to all
12 parties with an interest in the claim of the intent to settle. Each party
13 with an interest in a claim under subsections (a) and (b) shall cooperate with
14 all other parties in litigation or settlement of such claims.

15 (4) The purpose and intent of the reenactment of this statute is
16 to annul any and all case law inconsistent herewith."
17

18 SECTION 15. Arkansas Code Section 11-9-501(b) is hereby amended to read
19 as follows:

20 "(b) Compensation payable to an injured employee for disability, other
21 than permanent partial disability as specified in subsection (d) of this
22 section, and compensation payable to surviving dependents of a deceased
23 employee, the total disability rate, shall not exceed sixty-six and two-thirds
24 percent (66 2/3%) of the employee_s average weekly wage with a twenty dollar
25 (\$20.00) per week minimum, subject to the following maximums:

26 (1) For disability or death due to an injury occurring on and
27 after July 1, 1987, through December 31, 1988, the maximum weekly benefits
28 payable shall be one hundred eighty-nine dollars (\$189);

29 (2) For disability or death due to an injury occurring on and
30 after January 1, 1989, through December 31, 1989, the maximum weekly benefits
31 payable shall be sixty-six and two-thirds percent (66 2/3%) of the state
32 average weekly wage;

33 (3) For a disability or death which results from an injury
34 occurring on and after January 1, 1990, the maximum weekly benefit payable
35 shall be seventy percent (70%) of the state average weekly wage;

1 (4) For a disability or death which results from an injury
2 occurring during a calendar year beginning on or after January 1, 1997, the
3 maximum weekly benefit payable shall be eighty-five percent (85%) of the state
4 average weekly wage if and only if the Arkansas insurance commissioner
5 certifies to the Arkansas Workers' Compensation Commission during December
6 1996 that the overall Workers' Compensation insurance rates for Arkansas have
7 decreased by at least ten percent (10%) subsequent to the effective date of
8 this 1993 act;

9 (5) After January 1, 1994, the weekly benefit rate shall be
10 rounded to the nearest whole dollar, i.e., if the actual rate be a dollar
11 amount plus 49 cents or less, the rate for compensation purposes shall be the
12 next lower whole dollar amount; and if the actual rate by a dollar amount plus
13 50 cents or more, then the rate for compensation purposes shall be the next
14 higher whole dollar amount."

15

16 SECTION 16. Arkansas Code 11-9-503 is amended to read as follows:

17 "11-9-503 - Violation of safety provisions.

18 Notwithstanding any other definition of extra-hazardous employer as
19 provided by 11-9-409(3), any employer that fails to utilize the consultative
20 safety services available through the Arkansas Department of Labor, their own
21 insurance carrier or a private safety consultant shall be identified as an
22 extra-hazardous employer if it is established by preponderance of the evidence
23 that an injury or death is caused in substantial part by the failure of an
24 employer to comply with any Arkansas statute or official regulation pertaining
25 to the health or safety of employees or fails to follow safety consultant
26 recommendations, and when so notified the employer shall comply with 11-9-
27 409(3) (b) through (h) provided; if it is established by a preponderance of
28 the evidence that the employee is injured as a result of the employee_s
29 violation of employer_s safety rules or instructions, the provisions of this
30 section shall not apply."

31

32 SECTION 17. Arkansas Code 11-9-505 is amended to read as follows:

33 "11-9-505. Additional compensation - Rehabilitation.

34 (a) Any employer who without reasonable cause refuses to return an
35 employee who is injured in the course of employment to work, where suitable

1 employment is available within the employee_s physical and mental limitations,
2 upon order of the Commission and in addition to other benefits, such employer
3 shall be liable to pay to the employee the difference between benefits
4 received and the average weekly wages lost during the period of such refusal,
5 for a period not exceeding one year. In determining the availability of
6 employment, the continuance in business of the employer shall be considered,
7 and any written rules promulgated by the employer with respect to seniority or
8 the provisions of any collective bargaining agreement with respect to
9 seniority shall control.

10 (b) In addition to benefits otherwise provided for by this chapter, an
11 employee who is entitled to receive compensation benefits for permanent
12 disability and who has not been offered an opportunity to return to work
13 and/or re-employment assistance, shall be paid reasonable expenses of travel
14 and maintenance and other necessary costs of a program of vocational
15 rehabilitation if the Commission finds that the program is reasonable in
16 relation to the disability sustained by the employee. The employer's
17 responsibility for additional payments shall not exceed seventy-two (72)
18 weeks, regardless of the length of the program requested. The employee shall
19 not be required to enter any program of vocational rehabilitation against his
20 consent; however, no employee who waives rehabilitation or refuses to
21 participate in or cooperate for reasonable cause with either an offered
22 program of rehabilitation or job placement assistance shall be entitled to
23 permanent partial disability benefits in excess of the percentage of permanent
24 physical impairment established by objective physical findings. A request for
25 the program, if elected by the claimant, must be filed with the Commission
26 prior to a determination of the amount of permanent disability benefits
27 payable to the employee.

28 (c) This section shall not be construed as creating an exception to
29 the common law regarding employment at will.

30 (d) The purpose and intent of this statute is to place an emphasis on
31 returning the injured worker to work, while still allowing and providing for
32 vocational rehabilitation programs when determined appropriate by the
33 Commission."

34

35 SECTION 18. Arkansas Code §11-9-506 is amended to read as follows:

1 "11-9-506. Limitations on compensation - Recipients of unemployment
2 benefits.

3 Any other provisions of this chapter to the contrary notwithstanding-:

4 (a) No compensation in any amount for temporary total, temporary
5 partial or permanent total disability shall be payable to an injured employee
6 with respect to any week for which the injured employee receives unemployment
7 insurance benefits under the Arkansas Employment Security Act, §11-10-101 et
8 seq. or the unemployment insurance law of any other state, provided, however,
9 if a claim for temporary total disability is controverted and later determined
10 to be compensable, temporary total disability shall be payable to an injured
11 employee with respect to any week for which the injured employee receives
12 unemployment benefits but only to the extent the temporary total disability
13 otherwise payable exceeds such unemployment benefits."

14

15 SECTION 19. Arkansas Code §11-9-508 is amended to read as follows:

16 "11-9-508. Medical services and supplies - Liability of employer.

17 (a) The employer shall promptly provide for an injured employee such
18 medical, surgical, hospital, chiropractic, optometric, podiatric, and nursing
19 service, and medicine, crutches, ambulatory devices, artificial limbs,
20 eyeglasses, contact lenses, hearing aids, and other apparatus as may be
21 reasonably necessary in connection with the injury received by the employee.

22 (b) If the employer fails to provide the medical services set out in
23 subsection (a) of this section within a reasonable time after knowledge of the
24 injury, the Commission may direct that the injured employee obtain the medical
25 service at the expense of the employer, and any emergency treatment afforded
26 the injured employee shall be at the expense of the employer. In no
27 circumstance may an employee, his family, or dependents, be billed or charged
28 for any portion of the cost of providing the benefits to which he is entitled
29 under this chapter.

30 (c) In order to help control the cost of medical benefits, the
31 Commission, on or before July 1, 1994, following a public hearing and with the
32 assistance and cooperation of the Insurance Department, is authorized and
33 directed to establish appropriate rules and regulations to establish and
34 implement a system of managed health care for the State of Arkansas.

35 (d) For the purpose of establishing and implementing a system of

1 managed health care, the Commission is authorized to:

2 (1) Develop rules and regulations for the certification of
3 managed care entities to provide managed care to injured workers;

4 (2) Develop regulations for peer review, service utilization,
5 resolution of medical disputes;

6 (3) Prohibit balanced billing from the employee, employer, or
7 carrier;

8 (4) Establish fees for medical services as provided for in Rule
9 30, and its subsequent amendments. The Commission shall make no distinction
10 in approving fees from different classes of medical service providers or
11 health care providers for provision of the same or essentially similar medical
12 services or health care services as defined herein;

13 (5) Give the employer the right to choose the initial treating
14 physician with the injured employee having the right to petition the
15 commission for a one-time only change of physician to one associated with a
16 managed care entity certified by the Commission or is the regular treating
17 physician of the employee who maintains the employee's medical records and
18 with whom the employee has a bona fide doctor/patient relationship
19 demonstrated by a history of regular treatment prior to the onset of the
20 compensable injury, but only if the primary care physician agrees to refer the
21 employee to a certified managed care entity for any specialized treatment,
22 including physical therapy and only if such primary care physician agrees to
23 comply with all the rules, terms and conditions regarding services performed
24 by the managed care entity initially chosen by the employer. A petition for
25 change of physician shall be expedited by the commission;

26 (6) Any section or subsection of this act notwithstanding, the
27 injured employee shall have direct access to any optometrist or
28 ophthalmologist medical service provider who agrees to provide services under
29 the rules, terms and conditions regarding services performed by the managed
30 care entity initially chosen by the employer for the treatment/management of
31 eye injuries or conditions. Such optometric or ophthalmology medical service
32 provider shall be considered a certified provider by the Commission.

33 (7) Any other rules or regulations as may be necessary to carry
34 out the provisions of this section and its purpose of controlling medical
35 costs through the establishment of a managed care system."

1

2 SECTION 20. Arkansas Code §11-9-514 is amended to read as follows:

3 "11-9-514. Medical services and supplies - Change of physician.

4 (a) (1) If the employee selects a physician, the Commission shall not
5 authorize a change of physician unless the employee first establishes to the
6 satisfaction of the Commission that there is a compelling reason or
7 circumstance justifying a change.

8 (2) If the employer selects a physician, the claimant may
9 petition the Commission one (1) time only for a change of physician, and if
10 the Commission approves the change, with or without a hearing, the Commission
11 shall determine the second physician and shall not be bound by recommendations
12 of claimant or respondent. However, if the change desired by the claimant is
13 to a chiropractic physician, optometrist, or podiatrist, the claimant may make
14 the change by giving advance written notification to the employer or carrier.

15 (3) Following establishment of an Arkansas managed care system as
16 provided in Section 11-9-508 Arkansas Code Ann. 11-9-514 (a) (1) and (2) shall
17 become null and void and thereafter: The employer shall have the right to
18 select the initial primary care physician from amongst those associated with
19 certified managed care entities by the Commission as hereinabove provided.
20 The claimant employee, however, may petition the Commission one (1) time only
21 for a change of physician who must also either be associated with a managed
22 care entity certified by the Commission or is the regular treating physician
23 of the employee who maintains the employee_s medical records and with whom the
24 employee has a bona fide doctor/patient relationship demonstrated by a history
25 of regular treatment prior to the onset of the compensable injury, but only if
26 the primary care physician agrees to refer the employee to a certified managed
27 care entity for any specialized treatment, including physical therapy and only
28 if such primary care physician agrees to comply with all the rules, terms and
29 conditions regarding services performed by the managed care entity initially
30 chosen by the employer. A petition for change of physician shall be expedited
31 by the Commission.

32 (b) Treatment or services furnished or prescribed by any physician
33 other than the ones selected according to the foregoing, except emergency
34 treatment, shall be at the claimant_s expense.

35 (c) (1) After being notified of an injury, the employer or insurance

1 carrier shall deliver to the employee, in person or by certified or registered
2 mail, return receipt requested, a copy of a notice, approved or prescribed by
3 the Commission, which explains the employee_s rights and responsibilities
4 concerning change of physician.

5 (2) If, after notice of injury, the employee is not furnished a
6 copy of the notice, the change of physician rules do not apply.

7 (3) Any unauthorized medical expense incurred after the employee
8 has received a copy of the notice shall not be the responsibility of the
9 employer.

10 (d) A request for a hearing on a change of physicians by either the
11 employer or the injured employee shall be given preference on the Commission's
12 docket over all other matters.

13 (e) Cooperation on the part of both the injured employee and the
14 employer in an effort to select another physician is encouraged.

15 (f) When compensability is controverted, subsection (b) of § 11-9-514
16 shall not apply if:

17 (1) The employee requests medical assistance in writing prior to
18 seeking the same as a result of an alleged compensable injury; and

19 (2) The employer refuses to refer the employee to a medical
20 provider within forty-eight (48) hours after such written request as provided
21 above; and

22 (3) The alleged injury is later found to be a compensable
23 injury; and

24 (4) The employer has not made a previous offer of medical
25 treatment.

26 (g) The Commission shall by regulation require the inclusion of the
27 information set forth in subsection (f) on all A-6 forms."

28

29 SECTION 21. Arkansas Code §11-9-516 is amended to read as follows:

30 "11-9-516. Medical services and supplies - Information furnished by
31 provider.

32 (a) Every hospital or other person furnishing the injured employee with
33 medical services shall permit its records to be copied by and shall furnish
34 full written information to the Commission, the Workers_ Compensation Fraud
35 Investigation Unit, the employer, the carrier, and the employee or the

1 employee_s dependents. The reasonable cost of copies as set forth in Rule 30
2 shall be paid by the one requesting them to the health care or medical service
3 provider furnishing them.

4 (b) No person who, in good faith pursuant to subsection (a) of this
5 section or pursuant to rules and regulations established by the Commission who
6 reports medical information shall incur legal liability for the disclosure of
7 such information."

8

9 SECTION 22. Arkansas Code Section 11-9-519 is hereby amended to read as
10 follows:

11 "11-9-519. Compensation for disability - Total disability.

12 (a) In case of total disability, there shall be paid to the injured
13 employee during the continuance of the total disability sixty-six and
14 two-thirds percent (66 2/3%) of his average weekly wage.

15 (b) In the absence of clear and convincing proof to the contrary, the
16 loss of both hands, both arms, both legs, both eyes, or of any two (2) thereof
17 shall constitute permanent total disability.

18 (c) In all other cases, permanent total disability shall be determined
19 in accordance with the facts.

20 (d) No more often than annually the carrier or self-insured employer or
21 Death and Permanent Total Disability Trust Fund may require an injured worker
22 receiving permanent total disability benefits to, as of the date thereof,
23 certify on forms provided by the Workers Compensation Commission that he/she
24 is permanently and totally disabled and not gainfully employed. Notice of
25 such requirement shall be made by certified mail. Failure of the employee to
26 so certify within thirty (30) days after receipt of such notice shall permit
27 the discontinuance of benefits without penalty until otherwise ordered by the
28 Commission.

29 (e) Permanent total disability means inability, because of
30 compensable injury or occupational disease, to earn any meaningful wages in
31 the same or other employment. The burden of proof shall be on the employee to
32 prove inability to earn any meaningful wage in the same or other employment.

33 (f) In considering a claim for permanent disability the Commission and
34 the Courts shall not consider the odd-lot doctrine.

35 (g) Any permanent total disability benefits payable to an injured

1 worker age sixty-five (65) or older shall be reduced in an amount equal to,
2 dollar for dollar, the amount of benefits an injured worker receives or is
3 eligible to receive from a publicly or privately funded retirement or pension
4 plan but shall not be reduced by employee contributions to a privately funded
5 retirement or pension plan. The purpose and intent of this section is to
6 prohibit workers_ compensation from becoming a retirement supplement.

7 (h) On or before July 1, 1994, the Commission, after a public hearing,
8 shall adopt an impairment rating guide to be used in the assessment of
9 anatomical impairment. Said guide shall not include pain as a basis for
10 impairment provided the impairment rating guide adopted by the commission
11 shall become null and void on March 1, 1997 unless re-enacted by the General
12 Assembly."

13

14 SECTION 23. Arkansas Code Section 11-9-521 is hereby amended to read as
15 follows:

16 "11-9-521. Compensation for disability - Scheduled permanent injuries.

17 (a) An employee who sustains a permanent compensable injury scheduled
18 in this section shall receive in addition to compensation for temporary total
19 and temporary partial benefits during the healing period or until the employee
20 returns to work whichever occurs first weekly benefits in the amount of the
21 permanent partial disability rate attributable to the injury, for that period
22 of time set out in the following schedule:

23 (1) Arm amputated at the elbow, or between the elbow and shoulder, two
24 hundred ten (210) weeks;

25 (2) Arm amputated between the elbow and wrist, one hundred fifty-eight
26 (158) weeks;

27 (3) Leg amputated at the knee, or between the knee and the hip, one
28 hundred eighty-four (184) weeks;

29 (4) Leg amputated between the knee and the ankle, one hundred
30 thirty-one (131) weeks;

31 (5) Hand amputated, one hundred fifty-eight (158) weeks;

32 (6) Thumb amputated, sixty-three (63) weeks;

33 (7) First finger amputated, thirty-seven (37) weeks;

34 (8) Second finger amputated, thirty-two (32) weeks;

35 (9) Third finger amputated, twenty-one (21) weeks;

- 1 (10) Fourth finger amputated, sixteen (16) weeks;
2 (11) Foot amputated, one hundred thirty-one (131) weeks;
3 (12) Great toe amputated, thirty-two (32) weeks;
4 (13) Toe other than great toe amputated, eleven (11) weeks;
5 (14) Eye enucleated, in which there was useful vision, one hundred five
6 (105) weeks;
7 (15) Loss of hearing of one ear, forty-two (42) weeks;
8 (16) Loss of hearing of both ears, one hundred fifty-eight (158) weeks;
9 (17) Loss of one testicle, fifty-three (53) weeks; loss of both
10 testicles, one hundred fifty-eight (158) weeks.
11 (b) Compensation for amputation of the first phalange shall be one-half
12 (1/2) of the compensation for the amputation of the entire digit.
13 Compensation for amputation of more than one (1) phalange of a digit shall be
14 the same as for amputation of the entire digit;
15 (c) Compensation for the permanent loss of eighty percent (80%) or more
16 of the vision of an eye shall be the same as for the loss of an eye. In all
17 cases of permanent loss of vision, the use of corrective lens may be taken
18 into consideration in evaluating the extent of loss of vision;
19 (d) Compensation for amputation or loss of use of two (2) or more
20 digits or one (1) or more phalanges of two (2) or more digits of a hand or a
21 foot may be proportioned to the total loss of use of the hand or the foot
22 occasioned thereby but shall not exceed the compensation for total loss of a
23 hand or a foot;
24 (e) Compensation for permanent total loss of use of a member shall be
25 the same as for amputation of the member;
26 (f) Compensation for permanent partial loss or loss of use of a member
27 shall be for the proportionate loss or loss of use of the member;
28 (g) Any employee suffering a scheduled injury shall not be entitled to
29 permanent partial disability benefits in excess of the percentage of permanent
30 physical impairment set forth above except as otherwise provided in as §
31 11-9-519(b);
32 (h) On or before July 1, 1994, the Commission, after a public hearing,
33 shall adopt an impairment rating guide to be used in the assessment of
34 anatomical impairment. Said guide shall not include pain as a basis for
35 impairment provided the impairment rating guide adopted by the commission

1 shall become null and void on March 1, 1997 unless re-enacted by the General
2 Assembly."

3

4 SECTION 24. Arkansas Code Section 11-9-522 is amended to add
5 subsections (e), (f), and (g), as follows:

6 "(e) In considering a claim for permanent disability the Commission and
7 the Courts shall not consider the _odd-lot doctrine_.

8 (f) Any permanent partial disability benefits payable to an injured
9 worker age sixty-five (65) or older shall be reduced in an amount equal to,
10 dollar for dollar, the amount of benefits an injured worker received or is
11 eligible to receive from a publicly or privately funded retirement or pension
12 plan but not be reduced by the employee's contributions to a privately funded
13 retirement or pension plan. The purpose and intent of this section is to
14 prohibit workers' compensation from becoming a retirement supplement.

15 (g) On or before July 1, 1994, the Commission, after a public hearing,
16 shall adopt an impairment rating guide to be used in the assessment of
17 anatomical impairment. Said guide shall not include pain as a basis for
18 impairment provided the impairment rating guide adopted by the commission
19 shall become null and void on March 1, 1997 unless re-enacted by the General
20 Assembly."

21

22 SECTION 25. Arkansas Code Section 11-9-527(a) is hereby amended to read
23 as follows:

24 "(a) Funeral Expenses. If death results from an injury occurring on or
25 after July 1, 1993, the employer shall pay the actual funeral expenses, not
26 exceeding the sum of six thousand dollars (\$6,000)."

27

28 SECTION 26. Arkansas Code §11-9-529 is hereby amended to read as
29 follows:

30 "11-9-529. Employer Reports.

31 (a) Within ten (10) days after the date of receipt of notice or of
32 knowledge of injury or death, the employer shall send to the commission a
33 report setting forth:

34 (1) The name, address, and business of the employer;

35 (2) The name, address, and occupation of the employee;

1 (3) The cause and nature of the injury or death;

2 (4) The year, month, day, and hour when, and the particular
3 locality where, the injury or death occurred; and

4 (5) Such other information as the commission may require.

5 (b) Additional reports with respect to the injury and of the condition
6 of the employee shall be sent by the employer to the commission at such time
7 and in such manner as the commission may prescribe.

8 (c) Any report provided for in subsection (a) or (b) of this section
9 shall not be evidence of any fact stated in the report in any proceeding with
10 respect to the injury or death on account of which the report is made.

11 (d) The mailing of any report in a stamped envelope, properly
12 addressed, within the time prescribed in subsections (a) or (b) of this
13 section, shall be in compliance with this section.

14 (e) Any employer who after notice refuses to send any report required
15 of him by this section shall be subject to a civil penalty in an amount up to
16 five hundred dollars (\$500) for each refusal. Whenever the employer has
17 failed or refused to comply as herein provided, the commission may serve upon
18 such employer a proposed order declaring the employer to be in violation of
19 this chapter and containing the amount, if any, of the civil penalty to be
20 assessed against the employer pursuant to this section.

21 (f) An employer may contest a proposed order of the commission issued
22 pursuant to subsection (e) of this section by filing with the commission,
23 within twenty (20) days of receipt of the proposed order, a written request
24 for a hearing. If a written request for hearing is not filed with the
25 commission within this time, the proposed order, proposed penalty or both
26 shall be a final order of the commission. Such a request for a hearing need
27 not be in any particular form, but shall specify the grounds upon which the
28 person contests the proposed order, the proposed assessment or both. A
29 proposed order by the commission pursuant to this section is prima facie
30 correct, and the burden is upon the employer to prove that the proposed order
31 is incorrect.

32 (g) Hearings conducted under this section shall proceed as provided in
33 §§11-9-704 - 11-9-711.

34 (h) If an employer fails to pay any civil penalty assessed
35 thereagainst after an order issued pursuant to this section has become final

1 by operation of law, the Commission may petition the Chancery Court of the
2 county wherein is located the employer's principal place of business for an
3 order enjoining the employer from engaging in further employment or conduct of
4 business or until such time as the employer makes all required reports and
5 pays all civil penalties."

6

7 SECTION 27. Arkansas Code Section 11-9-702 is amended to read as
8 follows:

9 "11-9-702. Filing of Claims.

10 (a) TIME FOR FILING.

11 (1) A claim for compensation for disability on account of an
12 injury, other than an occupational disease and occupational infection, shall
13 be barred unless filed with the Commission within two (2) years from the date
14 of the compensable injury. If, during the two-year period following the
15 filing of the claim, the claimant receives no weekly benefit compensation and
16 receives no medical treatment resulting from the alleged injury, the claim
17 shall be barred thereafter.

18 (2) For purposes of this statute the date of the compensable
19 injury shall be defined as the date an _injury_ is caused by an _accident_ as
20 set forth in Ark. Code Ann. §11-9-102(5).

21 (3) A claim for compensation for disability on account of
22 injury which is either an occupational disease or occupational infection shall
23 be barred unless filed with the Commission within two (2) years from the date
24 of the last injurious exposure to the hazards of the disease or infection.

25 (A) However, a claim for compensation for disability on
26 account of silicosis or asbestosis must be filed with the Commission within
27 one (1) year after the time of disablement, and the disablement must occur
28 within three (3) years from the date of the last injurious exposure to the
29 hazard of silicosis or asbestosis.

30 (B) Also, a claim for compensation for disability on account
31 of a disease condition caused by exposure to x-rays, radioactive substances,
32 or an ionizing radiation only must be filed with the Commission within two (2)
33 years from the date the condition is made known to an employee following
34 examination and diagnosis by a medical doctor.

35 (4) A claim for compensation on account of death shall be barred

1 unless filed with the Commission within two (2) years of the date of such
2 death.

3 (5) If, within six (6) months after the filing of a claim for
4 compensation, no bona fide request for a hearing has been made with respect to
5 the claim, the claim may upon motion and after hearing be dismissed without
6 prejudice to the refiling of the claim within limitation periods specified in
7 subdivision (a) (1)-(4) of this section.

8 (b) *TIME FOR FILING ADDITIONAL COMPENSATION.* In cases where any
9 compensation including disability or medical, has been paid on account of
10 injury a claim for additional compensation shall be barred unless filed with
11 the Commission within one (1) year from the date of the last payment of
12 compensation, or two (2) years from the date of the injury, whichever is
13 greater. The time limitations of this subsection shall not apply to claims
14 for the replacement of medicine, crutches, ambulatory devices, artificial
15 limbs, eyeglasses, contact lenses, hearing aids, and other apparatus
16 permanently or indefinitely required as the result of a compensable injury,
17 where the employer or carrier previously furnished such medical supplies but
18 replacement of such items shall not constitute payment of compensation so as
19 to toll the running of the statute of limitations.

20 (c) A claim for additional compensation must specifically state that
21 it is a claim for additional compensation. Documents which do not
22 specifically request additional benefits shall not be considered a claim for
23 additional compensation.

24 (d) If, within six (6) months after the filing of a claim for
25 additional compensation, no bona fide request for a hearing has been made with
26 respect to the claim, the claim may upon motion and after hearing if necessary
27 be dismissed without prejudice to the refiling of the claim within the
28 limitation period specified in subdivision (b) of this section.

29 (e) *FAILURE TO FILE.* Failure to file a claim within the period
30 prescribed in subsections (a) or (b) of this section shall not be a bar to the
31 right unless objection to the failure is made at the first hearing on the
32 claim in which all parties in interest have been given a reasonable notice and
33 opportunity to be heard.

34 (f) *PERSONS UNDER DISABILITY.*

35 (1) Notwithstanding any statute of limitation provided for in

1 this chapter, when it is established that failure to file a claim by an
2 injured employee or his dependents was induced by fraud, the claim may be
3 filed within one (1) year from the time of the discovery of the fraud.

4 (2) The provisions of subsections (a) or (b) of this section
5 shall not apply to a mental incompetent or minor so long as the person has no
6 guardian or similar legal representative. The limitations prescribed in
7 subsections (a) or (b) of this section shall apply to the mental incompetent
8 or minor from the date of the appointment of a guardian or similar legal
9 representative for that person, and where no guardian or similar
10 representative has been appointed, to a minor upon obtainment of majority.

11 (g) A latent injury or condition shall not delay or toll the
12 limitation periods specified in this section. However, this subsection shall
13 not apply to the limitation period for occupational diseases specified in
14 subsection (a) (3).

15 (h) The purpose of this statute is to provide for a timely hearing on
16 claims for benefits. The purpose and intent of this statute also includes the
17 annulment of any and all case law inconsistent herewith."
18

19 SECTION 28. Arkansas Code §11-9-703(4) is amended to read as follows:

20 "(4) To authorize the legal advisor to approve compromise settlements
21 entered into at or as a result of the preliminary conference, and those joint
22 petition settlements entered into pursuant to §11-9-805, provided however, the
23 same legal advisors shall not both advise the claimant and approve the joint
24 petition. The purpose and intent of this section is to affirm the duty of the
25 Commission to provide legal assistance, reducing litigation and workers'
26 compensation cost."
27

28 SECTION 29. Arkansas Code §11-9-704(c) (3) is amended to read as
29 follows:

30 "(3) Administrative law judges, the Commission, and any reviewing
31 courts shall construe the provisions of this chapter strictly."
32

33 SECTION 30. Arkansas Code Section 11-9-705 is hereby amended to read as
34 follows:

35 "11-9-705. Nature of proceedings generally.

1 (a) Conduct of Hearing or Inquiry.

2 (1) In making an investigation or inquiry or conducting a hearing,
3 the commission shall not be bound by technical or statutory rules of evidence
4 or by technical or formal rules of procedure, except as provided by this
5 chapter, but may make such investigations or inquiry, or conduct the hearing
6 in a manner as will best ascertain the rights of the parties.

7 (2) Declarations of a deceased employee concerning the injury in
8 respect of which the investigation or inquiry is being made, or the hearing
9 conducted, may be received in evidence and may, if corroborated by other
10 evidence, be sufficient to establish the injury.

11 (3) When deciding any issue, administrative law judges and the
12 commission shall determine, on the basis of the record as a whole, whether the
13 party having the burden of proof on the issue has established it by a
14 preponderance of evidence.

15 (b) Hearings to be public - Records.

16 (i) Hearings before the commission shall be open to the public
17 and shall be stenographically reported, and the commission is authorized to
18 contract for the reporting of the hearings. The commission shall, by rule or
19 regulation, provide for the preparation of a record of all hearings and other
20 proceedings before it.

21 (ii) However, the Commission shall not be required to
22 stenographically report or prepare a record of joint petition hearings.
23 Instead, the administrative law or legal adviser shall tape the hearing at no
24 cost to the parties.

25 (c) Introduction of Evidence.

26 (1) All oral evidence or documentary evidence shall be presented
27 to the designated representative of the commission at the initial hearing on a
28 controverted claim, which evidence shall be stenographically reported. Each
29 party shall present all evidence at the initial hearing. Further hearings for
30 the purpose of introducing additional evidence will be granted only at the
31 discretion of the hearing officer or commission. A request for a hearing for
32 the introduction of additional evidence must show the substance of the
33 evidence desired to be presented.

34 (2) (A) Any party proposing to introduce medical reports or testimony
35 of physicians at the hearing of a controverted claim shall, as a condition

1 precedent to the right to do so, furnish to the opposing party and to the
2 commission copies of the written reports of the physicians of their findings
3 and opinions at least seven (7) days prior to the date of the hearing.
4 However, if no written reports are available to a party, then the party shall,
5 in lieu of furnishing the report, notify in writing the opposing party and the
6 commission of the name and address of the physicians proposed to be used as
7 witnesses at least seven (7) days prior to the hearing and the substance of
8 their anticipated testimony.

9 (B) If the opposing party desires to cross-examine the
10 physician, he should notify the party who submits a medical report to him as
11 soon as practicable, in order that he may make every effort to have the
12 physician present for the hearing.

13 (3) A party failing to observe the requirements of subsection (c)
14 of this section may not be allowed to introduce medical reports or testimony
15 of physicians at a hearing, except in the discretion of the hearing officer or
16 the commission.

17 (4) The aforesaid time periods may be waived by the consent of
18 the parties."

19

20 SECTION 31. Arkansas Code Section 11-9-713 is hereby amended to read as
21 follows:

22 "11-9-713. Modification of awards.

23 (a) Except where a joint petition settlement has been approved, the
24 Commission may review any compensation order, award, or decision. This may be
25 done at any time within six (6) months of termination of the compensation
26 period fixed in the original compensation order or award, upon Commission's
27 own motion or upon the application of any party in interest, on the ground of
28 a change in physical condition or upon proof of erroneous wage rate. Upon the
29 review the Commission may make an order or award terminating, continuing,
30 decreasing, or increasing for the future the compensation previously awarded,
31 subject to the maximum limits provided for in this chapter.

32 (b) The review and subsequent order or award shall be made in
33 accordance with the procedure prescribed in 11-9-704.

34 (c) No review shall affect any compensation paid pursuant to a prior
35 order or award.

1 (d) The Commission may, at any time, correct any clerical error in any
2 compensation order or award.

3 (e) Aging and the effects of aging on a compensable injury are not to
4 be considered in determining whether there has been a change in physical
5 condition. Nor shall aging or the effect of aging on a compensable injury be
6 considered in determining permanent disability pursuant to this section or any
7 other section in this chapter. The purpose and intent of this section is to
8 annul any and all case law inconsistent herewith including *Tuberville vs.*
9 *International Paper Co.*, 302 Ark. 22, 786 SW2d 830 (1990)."

10

11 SECTION 32. Any benefits payable to an injured worker under this act
12 shall be reduced in an amount equal to, dollar for dollar, the amount of
13 benefits an injured worker has previously received for the same medical
14 services or period of disability, whether those benefits were paid under a
15 group health care service plan of whatever form or nature or a group
16 disability policy, group loss of income policy, a group accident, health or
17 accident and health policy, a self-insured employee health and/or welfare
18 benefit plan, or a group hospital or medical service contract. The claimant
19 shall be required to disclose in a manner to be determined by the Commission
20 the identity, address or phone number of any person or entity which has paid
21 benefits described in this section in connection with any claim under this
22 act. Prior to any final award or approval of a joint petition, the claimant
23 shall be required to furnish the respondent with releases of all subrogation
24 claims for the benefits described in this section. In the event the claimant
25 is unable to produce releases required by this section then the Commission
26 shall determine the amount of such potential subrogation claim(s) and shall
27 direct the carrier or self-insured employer to hold in reserve only said sums
28 for a period of five (5) years. If after the expiration of five (5) years, no
29 release or final court order is presented otherwise directing the payment of
30 said sums, then the carrier or self-insured employer shall tender said sums to
31 the Death and Permanent Disability Fund.

32

33 SECTION 33. Arkansas Code §11-9-805 is hereby amended to read as
34 follows:

35 "11-9-805. Joint petition for final settlement.

1 (a) Upon petition filed by the employer or carrier and the injured
2 employee, requesting that a final settlement be had between the parties, the
3 Commission shall hear the petition and take such testimony and make such
4 investigations as may be necessary to determine whether a final settlement
5 should be had.

6 (b) If the Commission decides it is for the best interests of the
7 claimant that a final award be made, it may order an award that shall be final
8 as to the rights of all parties to the petition. Thereafter the Commission
9 shall not have jurisdiction over any claim for the same injury or any results
10 arising from it.

11 (c) If an employee has returned to work or agreed to return to work
12 the Commission shall not approve a joint petition which has allotted monies
13 for vocational rehabilitation or any indemnity benefits in excess of that
14 payable as an anatomical impairment as established by objective and measurable
15 findings.

16 (d) If the Commission denies the petition, the denial shall be without
17 prejudice to either party.

18 (e) No appeal shall lie from an order or award denying a joint
19 petition."
20

21 SECTION 34. Subchapter 8 of Chapter 9 of Title 11 of the Arkansas Code
22 is amended by inserting at the end thereof the following new section:

23 "11-9-812. (A) Upon approval by the Arkansas insurance commissioner
24 and following the adoption of such rules and regulations as the commissioner
25 deems necessary and advisable, each insurer issuing a policy under this
26 chapter shall offer, as a part of the policy or as an optional endorsement to
27 the policy, deductibles optional to the policyholder for benefits payable
28 under this chapter. Deductible amounts offered shall be fully disclosed to
29 the prospective policyholder in writing in the amount of \$100, \$200, \$300,
30 \$400, \$500, or increments of \$500 up to a maximum of \$2,500 per compensable
31 claim, or in such other amounts as may be set by the commissioner. The
32 policyholder exercising the deductible option shall choose only one deductible
33 amount.

34 (B) If the policyholder exercises the option and chooses a deductible,
35 the insured employer shall be liable for the amount of the deductible for

1 benefits paid for each compensable claim of work injury suffered by an
2 employee. The insurer shall pay all or part of the deductible amount,
3 whichever is applicable to a compensable claim, to the person or medical
4 provider entitled to the benefits conferred by this chapter and then seek
5 reimbursement from the insured employer for the applicable deductible amount.
6 The payment or nonpayment of deductible amounts by the insured employer to
7 the insurer shall be treated under the policy insuring the liability for
8 workers' compensation in the same manner as payment or nonpayment of premiums.

9 (C) Optional deductibles shall be offered in each policy insuring
10 liability for workers' compensation that is issued, delivered, issued for
11 delivery, or renewed under this chapter on or after approval by the insurance
12 commissioner, unless an insured employer and insurer agree to renegotiate a
13 workers' compensation policy in effect on that date so as to include a
14 provision allowing for a deductible.

15 (D) If the Insurance Commissioner determines it to be feasible and
16 under such rules and regulations as he may adopt premium reduction for
17 deductibles may be determined before the application of any experience
18 modification, premium surcharge, or premium discounts and to the extent that
19 an employer's experience rating or safety record is based on benefits paid,
20 money paid by the insured employer under a deductible as provided in this code
21 section may not be included as benefits paid so as to harm the experience
22 rating of such employer.

23 (E) This section shall not apply to employers who are approved to self-
24 insure against liability for workers' compensation or group self-insurance
25 funds for workers' compensation."
26

27 SECTION 35. The Seventy-Ninth General Assembly realizes that the
28 Arkansas Workers_ Compensation statutes must be revised and amended from time
29 to time. Unfortunately many of the changes made by this act were necessary
30 because Administrative Law Judges, the Workers_ Compensation Commission, and
31 the Arkansas Courts have continually broadened the scope and eroded the
32 purpose of the Workers_ Compensation statutes of this state. The Seventy-
33 Ninth General Assembly intends to restate that the major and controlling
34 purpose of Workers_ Compensation is to pay timely temporary and permanent
35 disability benefits to all legitimately injured workers that suffer an injury

1 or disease arising out of and in the course of their employment, to pay
2 reasonable and necessary medical expenses resulting therefrom and then to
3 return the worker to the workforce. When, and if, the Workers_ Compensation
4 statutes of this state need to be changed the General Assembly acknowledges
5 its responsibility to do so. It is the specific intent of the Seventy-Ninth
6 General Assembly to repeal, annul, and hold for naught all prior opinions or
7 decisions of any Administrative Law Judge, the Workers_ Compensation
8 Commission, or courts of this state contrary to or in conflict with any
9 provision in this act. In the future if such things as the Statute of
10 Limitations; the standard of review by the Workers_ Compensation Commission or
11 courts; the extent to which any physical condition, injury or disease should
12 be excluded from or added to coverage by the law; or the scope of the Workers_
13 Compensation statutes need to be liberalized, broadened, or narrowed it shall
14 be addressed by the General Assembly and should not be done by Administrative
15 Law Judges, the Workers_ Compensation Commission or the courts.

16

17 SECTION 36. (a) Every claim, request for benefits, request for
18 additional benefits, controversion of benefits, request for a hearing,
19 pleading, motion, and other paper of a party represented by an attorney shall
20 be signed by at least one (1) attorney of record in his or her individual
21 name, whose address shall be stated. A party who is not represented by an
22 attorney shall sign his claim, request for benefits, request for additional
23 benefits, controversion of benefits, request for a hearing, pleading, motion,
24 or other paper and state his address. The signature of an attorney or party
25 constitutes a certificate by him that he has read the claim, request for
26 benefits, request for additional benefits, controversion of benefits, request
27 for a hearing, pleading, motion, or other paper; that to the best of his
28 knowledge, information, and belief formed after reasonable inquiry it is well
29 grounded in fact and is warranted by existing law or a good faith argument for
30 the extension, modification, or reversal of existing law, and it is not
31 interposed for any improper purpose, such as to harass or to cause unnecessary
32 delay or needless increase in the cost of litigation. If a claim, request for
33 benefits, request for additional benefits, controversion of benefits, request
34 for a hearing, pleading, motion, or other paper is not signed, it shall be
35 stricken unless it is signed promptly after the omission is called to the

1 attention of the pleader or movant. If a claim, request for benefits, request
2 for additional benefits, controversion of benefits, request for a hearing,
3 pleading, motion, or other paper is signed in violation of this rule, the
4 commission, including administrative law judges, upon motion or upon their own
5 initiative, shall impose upon the person who signed it, a represented party,
6 or both, an appropriate sanction, which may include an order to pay to the
7 other party or parties the amount of reasonable expenses incurred because of
8 the filing of a claim, request for benefits, request for additional benefits,
9 controversion of benefits, request for a hearing, pleading, motion, or other
10 paper, including a reasonable attorney fee.

11 (b) Appropriate sanctions, including the amount of reasonable expenses
12 and attorney fees may also be imposed against a party or their attorney which
13 without good cause shown, fails to appear for a hearing, deposition, or any
14 other matter scheduled by the commission or administrative law judge, or
15 frivolously joins another party.

16

17 SECTION 37. Arkansas Code 11-9-802 is amended to read as follows:

18 "11-9-802. Installments.

19 (a) The first installment of compensation shall become due on the
20 fifteenth (15th) day after the employer has notice of the injury or death, as
21 provided in §11-9-701, on which date all compensation then accrued shall be
22 paid. Thereafter compensation shall be paid every two (2) weeks except where
23 the commission directs that installment payments be made at other periods.

24 (b) If any installment of compensation payable without an award is not
25 paid within fifteen (15) days after it becomes due, as provided in subsection
26 (a) of this section, there shall be added to the unpaid installment an amount
27 equal to eighteen percent (18%) thereof, which shall be paid at the same time
28 as, but in addition to, the installment, unless notice of controversion is
29 filed or an extension is granted the employer under §11-9-803, or unless such
30 non-payment is excused by the commission after a showing by the employer that
31 owing to conditions over which he had no control, the installment could not be
32 paid within the period prescribed.

33 (c) If any installment, payable under the terms of an award, is not
34 paid within fifteen (15) days after it becomes due, there shall be added to
35 such unpaid installment an amount equal to twenty percent (20%) thereof, which

1 shall be paid at the same time as, but in addition to, the installment unless
2 review of the compensation order making the award is had as provided in §§11-
3 9-710 - 11-9-712.

4 (d) Medical bills are payable within thirty (30) days after receipt by
5 the respondent unless disputed as to compensability or amount.

6 (e) In the event the commission finds the failure to pay any benefit is
7 willful and intentional the penalty shall be up to thirty-six percent (36%)
8 payable to the claimant."

9

10 SECTION 38. All provisions of this act of a general and permanent
11 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
12 Code Revision Commission shall incorporate the same in the code specifically
13 including Section 35.

14

15 SECTION 39. If any provision of this act or the application thereof to
16 any person or circumstance is held invalid, such invalidity shall not affect
17 other provisions or applications of the act which can be given effect without
18 the invalid provision or application, and to this end the provisions of this
19 act are declared to be severable.

20

21 SECTION 40. All laws and parts of laws in conflict with this act are
22 hereby repealed.

23

24 SECTION 41. Emergency. It is hereby found and determined by the
25 General Assembly that the Workers_ Compensation Law is in immediate need of
26 substantial revision; that this act accomplishes immediate revision; and that
27 this act shall go into effect as soon as is practical which is determined to
28 be July 1, 1993; and that unless this emergency clause is adopted, this act
29 will not go into effect until after July 1, 1993. Therefore, an emergency is
30 hereby declared to exist, and this act being immediately necessary for the
31 preservation of the public peace, health and safety shall be in full force and
32 effect from and after July 1, 1993. Furthermore, the provisions of this act
33 shall apply only to injuries which occur after July 1, 1993.

34

/s/Mike Wilson, et al

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