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1 **State of Arkansas**

2 **79th General Assembly**

3 **Regular Session, 1993**

4 **By: Representatives Flanagin, Walker, Goodwin, Landers, and Wallis**

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For An Act To Be Entitled

8 "AN ACT TO AMEND VARIOUS PROVISIONS OF THE WORKERS_
9 COMPENSATION LAW; AND FOR OTHER PURPOSES."

10

11

Subtitle

12 "TO AMEND VARIOUS PROVISIONS OF THE WORKERS_ COMPENSATION
13 LAW."

14

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

16

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

18 "11-9-101. Title. (a) This chapter shall be cited as the _Workers_
19 Compensation Law._

20 (b) The primary purposes of the workers_ compensation laws are to
21 improve workplace safety through mandatory safety programs, encourage the
22 return to work of injured workers, provide expanded rehabilitation
23 opportunities for injured workers, deter and punish frauds of both employers
24 and employees relating to the provision or denial of benefits, curtail the
25 rise in medical costs associated with the provision of workers_ compensation
26 benefits, emphasize that the workers_ compensation system in this state is
27 intended to rehabilitate, re-train, compensate, and return injured workers to
28 the workplace, and return the workers_ compensation system to a state of
29 economic viability."

30

31 SECTION 2. Arkansas Code 11-9-106 is amended to read as follows:

32 "11-9-106. Penalties for misrepresentation.

33 (a) Any person who willfully and knowingly makes any false or
34 misleading statement or representation for the purpose of obtaining any
35 benefit or payment, or for the purpose of defeating any claim for benefit or

1 payment, under this chapter shall be guilty of a Class D felony.

2 (b) A copy of subsection (a) of this section shall be placed on all
3 forms prescribed by the commission for the use of injured employees claiming
4 benefits, and for the use of employers in responding to such employees_
5 claims, under the Arkansas Workers_ Compensation Law, § 11-9-101 et seq.

6 (c) Where the commission or the commissioner finds that false or
7 misleading statements or representations were made willfully and knowingly for
8 the purpose of obtaining benefits or payments, or for the purpose of defeating
9 any claim for benefit or payment, under this chapter, the chairman of the
10 commission and/or the commissioner shall refer the matter for appropriate
11 action to the prosecuting attorney of the district where the original hearing
12 was held.

13 (d) (1) There shall be established within the Arkansas Insurance
14 Department a _Workers_ Compensation Fraud and Safety Investigation Unit_,
15 funded by the Workers_ Compensation Commission, which will be headed and
16 supervised by a director who shall have no fewer than three (3) years
17 experience in law enforcement, or alternatively a law degree, who shall, in
18 turn report to and be subject to the supervision of the Insurance
19 Commissioner.

20 (2) The commissioner, his deputies and assistants and the
21 director and his deputy shall be vested with the power of enforcing this
22 section 11-9-106 and to render more effective the disclosure and apprehension
23 of persons who abuse the workers_ compensation system as established by the
24 General Assembly by willfully and knowingly making false or misleading
25 statements for the purpose of either obtaining, wrongfully increasing, or
26 defeating the payment of benefits. Further, they shall be vested with
27 authority to review and investigate workplace safety programs as hereinafter
28 set forth, and, to report suspected violations of the mandate of A.C.A. §11-9-
29 402(c), §11-9-406 and §11-9-409 to the commissioner and to the chairman of the
30 commission for action and the possible imposition of the civil and criminal
31 penalties provided by §§11-9-406 and 11-9-409.

32 (3) It shall be the duty of the Workers_ Compensation Fraud and
33 Safety Investigation Unit to assist the commissioner and the department in the
34 performance of their duties, and further, to:

35 (A) Determine the identify of either carriers, employers

1 or employees who, within the State of Arkansas have violated the provisions of
2 A.C.A. §11-9-409 and subdivisions of (a), (b) and/or (c) of this section, and
3 to report same to the chairman of the commission and to the commissioner, who
4 shall, in turn, be responsible for reporting same to the prosecuting attorney
5 of the district in which the offender resides.

6 (B) With respect to the subject of any investigation or
7 hearing being conducted by the commissioner, the commissioner, his deputies
8 and assistants, and the director and his deputies shall have the power of
9 subpoena and may subpoena witnesses and administer oaths or affirmations and
10 examine any individual under oath and may require and compel the production of
11 records, books, papers, contracts and other documents.

12 (4) Witness fees, mileage, and the actual expense necessarily
13 incurred in securing attendance of witnesses and their testimony shall be
14 itemized and shall be paid by the person being examined or investigated if, in
15 the proceedings in which the witness is called, the person is found to have
16 been in violation of the law, or paid by the person, if other than the
17 commissioner or director, at whose request the hearing is held.

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

20 (A) If any individual fails to obey a subpoena issued and
21 served pursuant to this section with respect to any matter concerning which he
22 may be lawfully interrogated, upon application of the commissioner or
23 director, the circuit court of the county in which is pending the proceeding
24 at which the individual was required to appear, may issue an order requiring
25 the individual to comply with the subpoena and to testify.

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

28 (6) If any person has refused, in connection with an
29 investigation by the director, to be examined under oath concerning his
30 affairs, then the director is authorized to conduct and enforce by all
31 appropriate and available means any examination under oath in any state or
32 territory of the United States to which any officer, director, or manager may
33 then presently be to the full extent permitted by the laws of the state or
34 territory, this special authorization considered.

35 (7) Any person testifying falsely under oath or affirmation in

1 this state as to any matter material to any investigation or hearing shall,
2 upon conviction be guilty of perjury and punished accordingly.

3 (8) Every carrier, or employer who has reason to suspect that a
4 violation of A.C.A. §11-9-106(a) has occurred shall be required to report all
5 pertinent matters relating thereto to the Workers_ Compensation Fraud and
6 Safety Investigation Unit. No such carrier shall be liable to any employer or
7 employee for any such report; any such carrier or employer who knowingly fails
8 to report, and no employer shall be liable to any employee for such a report.
9 Any such carrier or employer who demonstrates a pattern or practice of
10 knowingly failing to report any such violation shall be guilty of a
11 misdemeanor and on conviction shall be punished by fine not to exceed one
12 thousand dollars (\$1,000) or by imprisonment in the state penitentiary, for a
13 period not to exceed one (1) year, or by both fine and imprisonment; although
14 not mandated to report suspected violations of A.C.A. 11-9-106(a) by an
15 employer or employee, any employee who does make such a report shall not be
16 liable to the employer or employee whose suspected violations he has reported.

17 (9) For the purpose of imposing criminal sanctions for violation
18 of the duties of this act, the prosecuting attorney shall have the right and
19 discretion to proceed against any person or organization responsible for such
20 violations, both organizational and individual liability being intended by
21 this act.

22 (10) The prosecuting attorney of the district where the original
23 hearing is held and to whom a suspected violation of A.C.A. 11-9-106(a), 11-9-
24 402(c), 11-9-406, and 11-9-409 has been referred shall, for the purpose of
25 assisting him in such prosecutions, have the authority to appoint as special
26 assistant prosecuting attorneys licensed attorneys at law in the employment of
27 the Insurance Department Workers_ Compensation Fraud and Safety Investigation
28 Unit. Such special assistant prosecuting attorneys shall, for the purpose of
29 the prosecutions to which they are assigned, be responsible to and report to
30 the prosecuting attorney.

31 (11) The commissioner, with the cooperation and assistance of the
32 commission, is authorized to establish such rules and regulations as may be
33 necessary to carry out the provisions of this section.

34 (12) Notwithstanding any other provision of law, it is the
35 specific intent of this section that active investigatory files as maintained

1 by the Insurance Department and by the Workers_ Compensation Fraud and Safety
2 Investigation Unit be deemed confidential and not be made open to the public
3 until the matter under investigation is closed by the Director with the
4 consent of the Commissioner.

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

9
10 SECTION 3. Arkansas Code § 11-9-107 is amended to read as follows:

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

12 Any employer who willfully discriminates in regard to the hiring or
13 tenure of work or any term or condition of work of any individual on account
14 of the individual's claim for benefits under this chapter, or who in any
15 manner obstructs or impedes the filing of claims for benefits under this
16 chapter, shall be guilty of a Class D felony. No private cause of action is
17 either created or eliminated in the individual employee by reason of the
18 enactment or re-enactment of this section."

19

20 SECTION 4. Arkansas Code § 11-9-109 is amended to read as follows:

21 "11-9-109. Agreement to pay premium void.

22 (a) No agreement by an employee to pay any portion of the premium paid
23 by his employer to a carrier or to contribute to a benefit fund or department
24 maintained by the employer for the purpose of providing compensation or
25 medical services and supplies as required by this chapter shall be valid.

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

29

30 SECTION 5. Arkansas Code § 11-9-201 is amended by the addition of the
31 following to appear as subsection (d) thereof:

32 "(d) Workers_ Compensation Advisory Council. The Governor shall
33 appoint a fifteen (15) member state Workers_ Compensation Advisory Council,
34 composed of men and women, including an equal number of employer
35 representatives and employee representatives who may fairly be regarded as

1 representative because of their vocation, employment or affiliations, and of
2 members representing the general public. The council, which shall be
3 effective and authorized to act commencing July 1, 1994, shall aid the
4 governor and make recommendations to the governor for the improvement of the
5 workers_ compensation law. The council shall determine and approve the
6 commission_s uses of funds allocated by A.C.A. 11-9-507."

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

9 "11-9-401. Employer's liability for compensation.

10 (a) (1) (A) Every employer should secure compensation to its employees
11 and pay or provide compensation for their disability or death from compensable
12 injury arising out of and in the course of employment .

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

17 (2) If an employee employed in this state temporarily leaves the
18 state incidental to that employment and receives a compensable injury arising
19 out of and in the course of employment, the employee, or beneficiaries of the
20 employee if the compensable injury results in death, is entitled to the
21 benefits of this chapter as though the employee received the compensable
22 injury within this state.

23 (3) Any employee from another state and the employer of the
24 employee in that other state are exempted from the provisions of this chapter
25 while the employer has a temporary workplace within this state and the
26 employee is within this state performing work for the employer:

27 (A) If that employer has furnished workers_ compensation
28 insurance coverage under the workers_ compensation law or similar laws of a
29 state other than Arkansas so as to cover that employee_s employment while in
30 this state;

31 (B) If the extraterritorial provisions of this chapter are
32 recognized in that other state; and

33 (C) If employers and employees who are covered in this
34 state are likewise exempted from the application of the workers_ compensation
35 law or similar laws of the other state.

1 The benefits under the workers_ compensation law or similar law of the
2 other state are the exclusive remedy against the employer for any compensable
3 injury received by the employee while working for that employer in this state.

4 (4) A certificate from the commission or similar office or
5 department of another state certifying that the employer of the other state is
6 insured therein and has provided extraterritorial coverage insuring employees
7 while working within this state is prima facie evidence that the employer
8 carries that workers_ compensation insurance.

9 (5) The commission shall have authority to enter into agreements
10 with the workers_ compensation agencies of other states relating to conflicts
11 of jurisdiction where the contract of employment is in one state and the
12 compensable injuries are received in the other state, or where there is a
13 dispute as to the boundaries or jurisdiction of the states and when such
14 agreements have been executed and made public by the respective state
15 agencies, the rights of employees hired in such other state and injured while
16 temporarily in Arkansas, or hired in Arkansas and injured while temporarily in
17 another state, or where jurisdiction is otherwise uncertain, shall be
18 determined pursuant to such agreements and confined to the jurisdiction
19 provided in such agreements.

20 (6) For the purposes of this subsection, _temporary workplace_
21 does not include a single location within this state where the employer_s work
22 is performed by one or more employees for more than thirty (30) days in a
23 calendar year."

24

25 SECTION 7. Arkansas Code 11-9-402 is amended to read as follows:

26 "11-9-402. Liability of prime contractors and subcontractors - Sole
27 proprietorships or partnerships.

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

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

35 (2) The claim for the recovery shall constitute a lien against

1 any moneys due or to become due to the subcontractor from the prime
2 contractor.

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

6 (c) (1) When a sole proprietorship or partnership fails to elect to
7 cover the sole proprietor or partners under this chapter, the prime contractor
8 is not liable under this chapter for injuries sustained by the sole proprietor
9 or partners if the sole proprietor or partners are not employees of the prime
10 contractor. A sole proprietor or the partners of a partnership who do not
11 elect to be covered by the workers_ compensation law and be deemed _employees_
12 thereunder and who deliver to the prime contractor a _Certificate of Non-
13 Coverage_ issued by the Workers_ Compensation Commission shall be conclusively
14 presumed to not be covered by the law or to be _employees_ of the prime
15 contractor; this provision shall not affect the rights or coverage of any
16 employees of the sole proprietor or of the partnership.

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

29

30 SECTION 8. Arkansas Code 11-9-406 is amended to read as follows:

31 "11-9-406. Failure to secure payment of compensation - Penalty.

32 (a) Any employer required to secure the payment of compensation under
33 this chapter who fails to secure compensation shall be guilty of a Class D
34 felony. This subsection shall not affect any other liability of the employer
35 under this act.

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

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

18 (3) If the employer alleges that a carrier has contracted to
19 provide its workers_ compensation insurance coverage for the period in
20 question, the employer shall include such allegation in its request for
21 hearing and shall name the carrier. The commission shall promptly notify such
22 carrier of the employer_s allegation and of the date of hearing. The carrier
23 shall promptly, and no later than five (5) days prior to the hearing, respond
24 in writing to the employer_s allegation by providing evidence of coverage for
25 the period in question or by affirmatively denying the employers allegation.

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

28 (5) The commission may assess a civil penalty against an
29 employer who fails to secure the payment of compensation in an amount up to
30 one thousand dollars (\$1,000) per day of violation.

31 (6) If an employer fails to secure the payment of compensation
32 or pay any civil penalty assessed there against after an order issued pursuant
33 to this section has become final by operation of law or upon appeal, the
34 commission may petition the Chancery Court of Pulaski County for an order
35 enjoining the employer from engaging in further employment until such time as

1 the employer secures the payment of compensation and/or makes full payment of
2 all civil penalties."

3

4 SECTION 9. Arkansas Code 11-9-408 is amended to read as follows:

5 "11-9-408. Insurance policies.

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

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

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

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

27 (4) Such other provisions as the department allows or requires
28 carriers to include in workers_ compensation policies.

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

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

35 (B) An employer may cancel coverage effective less than

1 thirty (30) days after written notice is received by the carrier where the
2 employer obtains other coverage or becomes a self-insurer. A cancellation
3 under this subdivision is effective immediately upon the effective date of the
4 other coverage or upon authorization as a self-insurer.

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

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

18 (4) If, before the effective date of cancellation where the
19 carrier issues notice of cancellation, the employer gives notice to the
20 carrier that it has not obtained coverage from another carrier and intends to
21 become insured under the Arkansas Workers_ Compensation Insurance Plan, the
22 carrier shall insure that continuing coverage is provided to the employer
23 under the plan without further application by the employer by transferring the
24 employer to the plan as of the effective date of cancellation. If the carrier
25 is a servicing carrier under the plan, it shall continue to provide coverage
26 for the employer in the normal course of administering the plan. Nothing in
27 this subdivision is intended to limit the authority of plan administrators to
28 require the employer to provide deposits or to make payments consistent with
29 plan requirements.

30 (c) Coverage. No policy or contract of insurance shall be issued
31 against liability under this chapter unless the policy or contract covers the
32 entire liability of the employer; provided, however, that a policy may be
33 issued covering the liability of an employer or of multiple employers as to
34 specific jobs, ventures, contracts or undertakings but only if such policy
35 meets with the reasonable satisfaction and approval of the commissioner that

1 such policy is in the best interest of the employers and the employees
2 concerned and does not unduly or improperly affect the continuity of workers_
3 compensation coverage by seriously and negatively affecting other carriers and
4 agents with outstanding policies issued to any of the employers in issue. As
5 to any questions of liability between the employer and the carrier, the terms
6 of the policy or contract shall govern."

7

8 SECTION 10. Arkansas Code 11-9-409 repealed by Section 4 of Act 561 of
9 1991, is reenacted to read as follows:

10 "11-9-409. Safety and health loss control consultative services.

11 (a) (1) The department, with the cooperation and assistance of the
12 commission, is authorized and directed to establish rules and regulations for
13 the provision of:

14 (i) safety and health loss control consultative service for
15 the specific and continuing purpose of increasing the awareness of employees
16 to dangers in the workplace environment; and

17 (ii) safety and health loss control surveys for the purpose
18 of identifying and remedying those aspects of each employer_s workplace which
19 pose a clear and unreasonable risk of injury to its employees. The
20 Legislature recognizes that workplace safety is a critical element in the
21 well-being of each and every employee in the state and in the state_s economic
22 well-being, and, further, it is determined that each may be improved by
23 mandatory and continuing educational programs which will enhance employees_
24 awareness of dangers posed by their environment and which will also demand
25 that clear and unreasonable risks of injury be removed from their environment
26 or modified so as to remove such risk from their environment.

27 (2) A carrier that issues a policy or contract of insurance to
28 employers under this chapter shall furnish in accordance with the rules and
29 regulations to be established, occupational safety and health loss control
30 consultative and educational program services to its insured employers which
31 are pertinent and reasonably applicable to each employer_s business. Further,
32 each such carrier shall cause a workplace safety and loss control survey to be
33 conducted upon the premises of each insured employer in accordance with the
34 dictates of said rules and regulations. Such survey shall identify health and
35 safety problems that pose a clear and unreasonable risk of injury to

1 employees, and shall include review of employer injury records with
2 appropriate employer personnel, and development of plans for the establishment
3 of or the improvement of employer safety and health loss control programs. At
4 the time a policy or contract of insurance is issued, and on an annual basis
5 thereafter, the carrier shall notify its insured employers of the loss control
6 consultative services the carrier is required to offer and shall provide to
7 the employer a written description of those services. The actual
8 implementation of all programs described in this subsection (a) are the
9 responsibility of the employer.

10 (3) (a) A self-insurer shall establish and implement an
11 occupational safety and health loss control program and shall carry out safety
12 and health loss control surveys of the work environment in a manner consistent
13 with the rules and regulations to be established by the department.

14 (b) A carrier or self-insurer may furnish any of the
15 services required by this section through an independent contractor.

16 (c) The carrier shall not charge the employer any fee in
17 addition to the insurance premium for safety and health loss control
18 consultative or survey services, although the expenses of such programs shall
19 be entitled to consideration by class in the rate-making and approval process.

20 (d) The commission may assess a civil penalty against an
21 employer who fails to utilize the loss control consultative services offered
22 by its carrier or against any self-insurer or self-insured group who fails to
23 establish and implement an occupational safety and health loss control
24 program. Further, the commission may petition the Chancery Court of Pulaski
25 County for an order enjoining the employer from engaging in further employment
26 until such time as the employer utilizes and/or provides the occupational
27 safety and health loss control program described above and/or makes payment of
28 all civil penalties.

29 (e) The commission may forward to the department or its
30 Fraud and Safety Investigation Unit any information concerning a carrier's
31 failure to furnish occupational safety and health loss control and workplace
32 survey services required by this section.

33 (f) There shall be no private cause of action against the
34 employer, carrier or independent contractor for any breach or dereliction of
35 the duties created by this section."

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

"11-9-501. (b) Compensation payable to an injured employee for disability, other than permanent partial disability as specified in subsection (d) of this section, and compensation payable to surviving dependents of a deceased employee, the total disability rate, shall not exceed sixty-six and two-thirds percent (66 2/3%) of the employee_s average weekly wage with a twenty dollar (\$20.00) per week minimum, subject to the following maximums:

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

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

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

(4) After January 1, 1994, the weekly benefit rate shall be rounded to the nearest whole dollar, i.e., if the actual rate be a dollar amount plus forty nine cents (49¢) or less, the rate for compensation purposes shall be the next lower whole dollar amount; and if the actual rate by a dollar amount plus fifty cents (50¢) or more, then the rate for compensation purposes shall be the next higher whole dollar amount."

SECTION 12. Arkansas Code 11-9-505 is hereby amended to read as follows:

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

(1) (a) The carrier or self-insured employer shall cause vocational assistance to be provided to an injured worker who is eligible for assistance in returning to work.

(b) For this purpose the carrier or self-insured employer shall contact a worker with a claim for a permanent disabling compensable injury for

1 evaluation of the worker_s eligibility for vocational assistance within five
2 (5) days of:

3 (A) Having knowledge of the worker_s likely eligibility
4 for vocational assistance, from a medical or investigation report,
5 notification from the worker, or otherwise; or

6 (B) The time the worker has reached the end of the healing
7 period, if the worker has not returned to the worker_s regular employment or
8 other suitable employment with any employer at the time of injury and the
9 worker is not receiving vocational assistance.

10 (c) Likely eligibility may be redetermined by the carrier or
11 self-insured employer upon receipt of new information that would change the
12 eligibility determination.

13 (2) As soon as possible, and not more than thirty (30) days after the
14 contact required by subsection (1) of this section, the carrier or self-
15 insured employer shall determine whether the worker is eligible for vocational
16 assistance. The carrier or self-insured employer shall notify the worker of
17 the decision regarding the worker_s eligibility for vocational assistance. If
18 the carrier or self-insured employer decides that the worker is not eligible,
19 the worker may apply to the commission for review of the decision as provided
20 in A.C.A. § 11-9-711. A worker determined ineligible upon evaluation under
21 subparagraph (B) or paragraph (b) of subsection (1) of this section may not be
22 found eligible thereafter unless that eligibility determination is rejected by
23 the commission under A.C.A. § 11-9-711 or the worker_s condition worsens
24 substantially as a direct result of the compensable injury.

25 (3) The objectives of vocational assistance are to return the worker
26 to employment which is as close as possible to the worker_s regular employment
27 or to _suitable employment_ as hereinafter defined. Any worker who refuses an
28 offer to return to his previous employment or to accept any other _suitable
29 employment_ offered to him shall not be eligible for vocational assistance.

30 (4) (a) A worker is eligible for vocational assistance if the worker
31 will not be able to return to the previous employment or to any other
32 available and suitable employment with any employer, and if the worker has a
33 permanent disabling compensable injury and a substantial handicap to
34 employment.

35 (b) As used in this subsection:

1 (A) A substantial handicap to employment exists when the
2 worker, because of the injury, lacks the necessary physical abilities,
3 knowledge or educational level and job skills to be employed in suitable
4 employment.

5 (B) Suitable employment means:

6 (i) Employment of the kind for which the worker has
7 the necessary physical abilities, educational level and job skills:

8 (ii) Employment that is located where the worker
9 customarily worked or is within a fifty (50) mile one way automobile commuting
10 distance of the worker's residence: and

11 (iii) Employment that produces a wage within twenty
12 (20) percent of that currently being paid for employment which was the
13 worker's regular employment.

14 (5) Vocational evaluation, assistance in maintaining current
15 employment, assistance in directly obtaining new employment and training shall
16 be available under conditions prescribed by the Commission. Vocational
17 assistance may consist of

18 (i) an evaluation of the injured worker's physical abilities,
19 educational level and job skills as they currently exist and a determination
20 of whether there may be suitable employment without re-training;

21 (ii) a determination of whether there are available employment
22 positions consonant with the injured worker's physical abilities, education
23 and job skills where an employer would provide on the job training without the
24 necessity of prior re-training; or

25 (iii) a formal program of vocational re-training.

26 The commission may establish or approve other conditions on the providing of
27 vocational assistance and services, including those relating to the worker's
28 availability for assistance, participation in previous assistance programs
29 connected with the same claim and the nature and extent of assistance that may
30 be provided. Such conditions shall give preference to direct employment
31 assistance over training or re-training. A determination of return-to-work
32 potential with a worker's present employer shall include a review of whether:

33 (i) there may be a position available with the present employer
34 which meets the test of suitable employment as set forth above, or

35 (ii) whether there may be reasonable accommodation by the employer

1 that would make return-to-work feasible for the worker and which would not
2 result in unreasonable financial hardship on the employer. Such reasonable
3 accommodation may include, but is not necessarily limited to, modifications of
4 the work site, job restructuring and identification of lighter duty work. An
5 employer shall not be obligated, however, to create a job where one did not
6 previously exist merely to accommodate a worker with permanent limitations.
7 Provided, however, that any employer who, without good cause, shall refuse to
8 either return a worker who is injured in the course of his employment to work
9 or to perform the reasonable accommodations described above, shall, upon
10 Order of the Commission and a determination that there has not been good cause
11 for the refusal, be liable to the injured worker for a sum equal to the
12 difference between the indemnity benefits actually received and the average
13 weekly spendable earnings lost during the period of such refusal, the employer
14 in no event to be liable for such difference for a period greater than one
15 year.

16 (6) Vocational assistance as provided for by this section may be
17 offered by insurers or by employers through properly authorized personnel, and
18 that assistance may be offered either separately from the managed care
19 providers of health care services or they may be offered in conjunction
20 therewith as part of a coordinated continuum of service designed to again
21 place the injured worker back into the workplace environment. Whether done as
22 a separate and distinct program or by contract with or in association with the
23 providers of managed care health services, all vocational assistance
24 services must be performed by vocational counselors, and other persons
25 certified or authorized by the Commission as capable of delivering such
26 services.

27 (7) A carrier or self-insured employer may utilize its own authorized
28 or certified staff to perform the vocational evaluation and assistance
29 required by subsection (2) of this section if certified by the Commission to
30 provide such service. The carrier or self-insured employer may, in addition
31 to or as an alternative to providing vocational evaluation and assistance
32 themselves, also engage the services of either the Division of Rehabilitation
33 Services of the Arkansas Department of Human Services or any other person
34 certified by the Commission as capable of rendering the services required.

35 (8) The Commission shall adopt rules providing:

1 (a) Standards for methods of certifying vocational counselors and
2 nurse case managers certifying such providers who are qualified by education,
3 training, experience and plan of operation to provide vocational and medical
4 case management assistance to injured workers;

5 (b) Conditions and procedures under which the certification of an
6 individual or the authorization of a vocational or medical case management
7 provider to provide vocational assistance services may be suspended or revoked
8 for failure to maintain compliance with the certification or authorization
9 standards;

10 (c) Standards for the nature and extent of services a worker may
11 receive, for plans for return to work and for determining when the worker has
12 returned to work; and

13 (d) Procedures, schedules and conditions relating to the payment
14 for services performed by vocational counselors or other providers, which
15 shall be based on payment for services reasonably required and performed on an
16 hourly basis with due regard to the complexity thereof and time required for
17 delivery thereof.

18 (9) Carriers and self-insured employers shall maintain records and make
19 reports to the Commission of vocational and medical case management assistance
20 actions at such times and in such manner as the Commission may prescribe.
21 Such requirements shall be for the purpose of assisting the Commission in
22 monitoring compliance with this section to insure that workers receive timely
23 and appropriate medical case management and vocational assistance. The
24 Commission shall minimize to the greatest extent possible the number, extent
25 and kinds of reports required. The Commission shall compile a list of the
26 organizations or agencies authorized to provide vocational and medical case
27 management assistance. A current list shall be distributed by the Commission
28 to all carriers and self-insured employers.

29 (10) When a worker is eligible to receive vocational assistance, the
30 worker and the carrier or self-insured employer shall attempt to agree on the
31 choice of a vocational assistance provider. If the worker agrees, the carrier
32 or self-insured employer may utilize its own staff to provide vocational
33 assistance if it is certified as hereinabove provided. If they are unable to
34 agree on a vocational assistance provider, the carrier or self-insured
35 employer shall notify the Commission and the Commission shall select a

1 provider. Any change in the choice of vocational assistance provider is
2 subject to the approval of the Commission. The worker shall have a duty to
3 diligently attend and actively participate in all training for which he has
4 been approved. Any employee or worker who fails to diligently attend and
5 actively participate in the training or who refuses to enter such a program
6 after having been determined eligible therefor, shall not be entitled to any
7 compensation during the continuance of the failure or refusal, respectively.

8 (11) Notwithstanding A.C.A. §§ 11-9-501 and 11-9-502, a worker who is
9 drawing permanent partial indemnity benefits or temporary total indemnity
10 benefits, and who has been determined as provided hereinabove set forth as
11 eligible for vocational assistance, must make every reasonable effort to
12 initiate and complete his vocational training as soon as reasonably possible.
13 A worker actively engaged in such training shall be paid reasonable expenses
14 of travel and maintenance and other necessary costs of the vocational
15 assistance program if found by the commission to be reasonable in relation to
16 the particular worker and his circumstances. The employer_s responsibility
17 for these additional expenses shall not exceed fifty-two (52) weeks,
18 regardless of the length of the program the worker may desire to pursue;
19 provided, however, that the vocational training program may be extended to a
20 maximum of eighty-six (86) weeks, but only upon Order of the Commission upon a
21 clear and convincing showing of good cause therefor. During the continuance
22 of the vocational training program, and so long as the worker is complying
23 with his requirements with respect thereto as set forth above, he shall
24 continue to receive such permanent partial indemnity benefits as to which he
25 is entitled to under the Act. If such payments would terminate prior to the
26 end of the vocational training program, the Commission may order such periodic
27 payments to continue through the end of the vocational assistance program as
28 hereinabove set forth, with the condition that the worker diligently attend
29 and actively participate in all such training for which he has been approved.
30 Any payments of permanent partial indemnity so extended by extension of the
31 vocational training program shall be credited in favor of the employer in
32 conjunction with any final determination of wage loss disability.

33 (12) As used in this section, _vocational assistance provider_ means a
34 public or private organization or agency which provides vocational assistance
35 to injured workers.

1 (13) (a) Determination of eligibility for vocational assistance does
2 not entitle all workers to the same type or extent of assistance.

3 (b) Training shall not be provided to an eligible worker solely
4 because the worker cannot obtain employment, otherwise suitable, that will
5 produce the wage prescribed in subsection (4) of this section unless such
6 training will enable the worker to find employment which will produce a wage
7 significantly closer to that prescribed in subsection (4) of this section.

8 (14) A physical capacities evaluation shall be performed in conjunction
9 with vocational assistance or determination of eligibility for such assistance
10 at the request of the carrier or self-insured employer or worker if agreed to
11 by all parties or provided by order of the Commission. Such request shall be
12 made to the attending physician or to other persons duly certified by the
13 Commission as qualified to perform such evaluations. The attending physician
14 or other designated evaluator, within twenty (20) days of the request, shall
15 perform a physical capacities evaluation or refer the worker for such
16 evaluation or advise the carrier or self-insured employer and the worker in
17 writing that the injured worker is incapable of participating in a physical
18 capacities evaluation.

19 (15) This section shall not be construed as creating an exception to
20 the common law doctrine of employment at will."

21

22 SECTION 13. Arkansas Code 11-9-506 is amended to read as follows:

23 "11-9-506. Limitations on compensation - Recipients of unemployment
24 benefits.

25 Any other provisions of this chapter to the contrary notwithstanding:

26 (a) No compensation in any amount for temporary total, temporary
27 partial or permanent total disability shall be payable to an injured employee
28 with respect to any week for which the injured employee receives unemployment
29 insurance benefits under the Arkansas Employment Security Act, §11-10-101 et
30 seq. or the unemployment insurance law of any other state."

31

32 SECTION 14. Arkansas Code 11-9-508 is amended to read as follows:

33 "11-9-508. Medical services and supplies - Liability of employer.

34 (a) (1) The liability of the employer for medical services and
35 supplies will be subject to the oversight of and administration by a managed

1 care administrator as set out herein.

2 (2) For every compensable injury, the employer shall cause to be
3 provided to the injured employee such medical services as are determined by
4 the managed care plan administrator to be usual, customary and reasonable for
5 the treatment of the injury received by the employee, including such medical
6 services as are determined to be usual, customary and reasonable by the
7 managed care plan administrator after a determination of permanent disability.

8 (3) Medical services shall include medical, surgical, hospital,
9 nursing, ambulances and other related services, and drugs, medicine, crutches
10 and prosthetic appliances, braces and supports, and, where necessary, physical
11 restorative services.

12 (b) If the employer fails to provide the medical services set out in
13 subsection (a) of this section within a reasonable time after knowledge of the
14 injury, the commission may direct that the injured employee obtain the medical
15 service at the expense of the employer, and any emergency treatment afforded
16 the injured employee shall be at the expense of the employer.

17 (c) A medical service provider or health care provider shall neither
18 bill an employer nor collect for any amount for health care services or
19 medical services provided for the treatment of a covered injury, illness, or
20 occupational disease, when that amount exceeds the amount determined by the
21 managed care plan administrator to be usual, customary and reasonable
22 reimbursement for the medical or health care service provided. The
23 determination shall be subject to challenge and final determination by the
24 commission.

25 (d) As used in this subsection, medical service provider means a
26 person duly licensed to practice one or more of the healing arts in this state
27 as identified at Chapters 81, 82, 84, 89, 90, 93, 95, 96 and 97 of Subtitle 3,
28 Title 17, of Arkansas Code and who, further, has been certified by the
29 commission as a managed care provider as set forth hereinabove.

30 (e) As used in this subsection, health care provider means:

31 (i) a person or entity meeting the definitions of either
32 Hospital, Institution, Medical Facility, or Recuperative Center, as
33 defined at A.C.A. § 20-9-201, which is properly licensed as such under the
34 terms and provisions of Title 20, Arkansas Code, or

35 (ii) an entity which is a health maintenance organization as

1 defined at A.C.A. § 23-76-102, or

2 (iii) a preferred provider organization as defined at Bulletin
3 No. 9-85 and 9-85A of the Arkansas Insurance Department or as may be defined
4 by statute; each of which has been certified as a managed health care provider
5 as set forth hereinabove, means a person duly licensed to practice one or more
6 of the healing arts in this state and who has been certified by the commission
7 as a managed care provider as set forth hereinabove.

8 (f) Usual, customary and reasonable with respect to:

9 (i) fees charged by both medical service providers and health-
10 care providers to outpatients, and

11 (ii) fees charged by medical service providers to inpatients
12 shall hereby be defined to mean the schedule of fees and medical services set
13 out in Rule 30 of the Workers' Compensation Commission, as it may be amended
14 or by other applicable rules thereof. With respect to fees charged to
15 inpatients charged by health care providers, the term usual, customary and
16 reasonable shall, similarly, be defined by Rule 30 of the Workers'
17 Compensation Commission which shall be amended by the commission to include
18 same and be made effective no later than July 1, 1993."

19

20 SECTION 15. Arkansas Code 11-9-513 is amended to read as follows:

21 "11-9-513. Medical services and supplies - Approval of charges.

22 (a) It is the intent of this section that all medical and health care
23 services required by this chapter shall be provided to injured employees,
24 insofar as reasonably possible, by health care providers and medical service
25 providers who or which have been certified to provide managed care. Any
26 health care provider or group of health care providers or medical service
27 provider or group of medical service providers may make application to the
28 commission to become certified to provide managed care to injured workers for
29 injuries and diseases compensable under this chapter. However, nothing in
30 this section authorizes an organization that is formed, owned or operated by a
31 carrier or employer other than a health care provider to become certified to
32 provide managed care.

33 (b) In those counties of this state where at least one health care
34 provider or one medical service provider has been certified to provide managed
35 care appropriate to the compensable injury that has occurred, employers and/or

1 their carriers subject to this chapter shall make arrangements and contracts
2 with such health care providers or medical service providers for the treatment
3 of the injuries and diseases compensable under this chapter. In the event no
4 health care providers or medical service providers have been certified within
5 the county in which the employer_s principal place of business is located,
6 employers and/or their carrier may make other appropriate arrangements for the
7 provision of usual, customary and reasonable care for injured employees. But
8 in counties where there are certified providers with facilities and services
9 reasonably appropriate for treating compensable injuries, no workers
10 compensation benefits may be payable to a medical service provider or health
11 care provider which has not been certified as provided herein or who, if a
12 primary care physician who maintains an employee_s medical records and has a
13 documented history of treatment and a bona fide doctor/patient relationship,
14 has not agreed to be bound by the terms of the managed care program. In no
15 event, however, shall this section be deemed to deny the right of any health
16 care or medical service provider to receive the usual, customary and
17 reasonable cost of emergency treatment rendered thereby when it was not
18 practicable to transport the injured worker to a certified provider.

19 (c) (1) A certificate is valid for such period as the commission may
20 prescribe unless sooner revoked or suspended.

21 (2) Application for certification shall be made in such form and
22 manner and shall set forth such information regarding the proposed plan for
23 providing services as the commission may prescribe. The information shall
24 include, but not be limited to:

25 (A) A list of the names of all individuals who will
26 provide services under the managed care plan, together with appropriate
27 evidence of compliance with any licensing or certification requirements for
28 that individual to practice in this state.

29 (B) A description of the times, places and manner of
30 providing services under the plan.

31 (C) A description of the times, places and manner of
32 providing other related optional services the applicants may wish to provide.

33 (D) Satisfactory evidence of ability to comply with any
34 financial requirements to insure delivery of service in accordance with the
35 plan which the commission may prescribe.

1 (3) The commission shall certify a health care provider or
2 medical service provider to provide managed care under a plan if the
3 commission finds that the plan:

4 (A) Proposes to provide services that meet quality,
5 continuity and other treatment standards prescribed by the commission and will
6 provide all medical and health care services that may be required by this
7 chapter in a manner that is timely, effective and convenient for the employee.

8 (B) Subject to any other provision of law, does not
9 discriminate against or exclude from participation in the plan any category of
10 medical service providers and includes an adequate number of each category of
11 medical service providers to give employees adequate flexibility to choose
12 medical service providers from among those individuals who provide services
13 under the plan.

14 (C) Provides appropriate financial incentives to reduce
15 service costs and utilization without sacrificing the quality of service.

16 (D) Provides adequate methods of peer review, service
17 utilization review and dispute resolution to prevent inappropriate or
18 excessive treatment, to exclude from participation in the plan those
19 individuals who violate these treatment standards and to provide for the
20 resolution of such medical disputes as the commission considers appropriate.

21 (E) Provides a program involving cooperative efforts by
22 the employees, the employer and the managed care organizations to promote
23 workplace health and safety consultative and other services and early return
24 to work for injured employees.

25 (F) Provides a timely and accurate method of reporting to
26 the commission necessary information regarding medical and health care service
27 cost and utilization to enable the commission to determine the effectiveness
28 of the plan.

29 (G) Authorizes employees to receive compensable medical
30 treatment from a primary care physician who is not a member of the certified
31 medical service or health care provider organization, but who has had a bona
32 fide doctor/patient relationship with the employee prior to the compensable
33 injury and who maintains the employee_s medical records and with whom the
34 employee has a documented history of treatment, if that primary care physician
35 agrees to refer the employee to the managed care organization for any

1 specialized treatment, including physical therapy, to be furnished by another
2 provider that the employee may require, and if the primary care physician
3 agrees to comply with all the rules, terms and conditions regarding services
4 performed by the managed care organization. As used in this subdivision,
5 primary care physician means an attending physician as set out in §11-9-
6 102(20) (A) and who is a family practitioner, a general practitioner or an
7 internal medicine practitioner.

8 (H) Complies with any other requirement the commission
9 determines is necessary to provide quality medical services and health care to
10 injured employees.

11 (4) The commission shall refuse to certify or may revoke or
12 suspend the certification of any health care provider or medical service
13 provider to provide managed care if the commission finds that:

14 (A) The plan for providing medical or health care services
15 fails to meet the requirements of this subsection.

16 (B) Service under the plan is not being provided in
17 accordance with the terms of a certified plan.

18 (5) No data generated by utilization review, quality assurance
19 or peer review activities pursuant to this subsection or the commission's
20 review thereof shall be used in any action, suit or proceeding except to the
21 extent considered necessary by the commission in the administration of this
22 chapter.

23 (6) A person participating in utilization review, quality
24 assurance or peer review activities pursuant to this subchapter shall not be
25 examined as to any communication made in the course of such activities or the
26 findings thereof, nor shall any person be subject to an action for civil
27 damages for affirmative actions taken or statements made in good faith, nor
28 shall any evidence of any decisions, deliberations or activities be
29 discoverable or admissible into evidence in any other hearing or court apart
30 from proceedings before the commission and appellate review thereof.

31 (7) No person who participates in forming consortiums,
32 collectively negotiating fees or otherwise solicits or enters into contracts
33 in a good faith effort to provide medical or health care services according to
34 the provisions of this subsection shall be examined or subject to criminal,
35 administrative or civil liability regarding any such participation except

1 pursuant to the commission_s active supervision of such activities and of the
2 managed care organization. Before engaging in such activities, the person
3 shall provide notice of intent to the commission in a form prescribed by the
4 commission.

5 (8) The provisions of this subsection shall not affect the
6 confidentiality or admission in evidence of an employee_s medical treatment
7 records.

8 (9) The commission, with the cooperation and assistance of the
9 department, is authorized to establish such rules and regulations as may be
10 necessary to carry out the provisions of this subsection.

11 (10) As used in this subsection _medical service provider_ means
12 a person duly licensed to practice one or more of the healing arts in this
13 state as identified at Chapters 81, 82, 84, 89, 90, 93, 95, 96 and 97 of
14 Subtitle 3, Title 17, of Arkansas Code and who, further, has been certified by
15 the commission as a managed care provider as set forth hereinabove.

16 (11) As used in this section _health care provider_ means:

17 (i) a person or entity meeting the definitions of either
18 _Hospital_, _Institution_, Medical Facility_, or _Recuperative Center_, as
19 defined at A.C.A. § 20-9-201, which is properly licensed as such under the
20 terms and provisions of Title 20, Arkansas Code, or

21 (ii) an entity which is a _health maintenance organization_
22 as defined at A.C.A. § 23-76-102, or

23 (iii) a _preferred provider organization_ as defined at
24 Bulletin No. 9-85 and 9-85A of the Arkansas Insurance Department or as may be
25 defined by statute; each of which has been certified as a managed health care
26 provider as set forth hereinabove.

27 (d) This section regarding certification shall become effective and
28 enforceable by the commission from and after July 1, 1993."

29

30 SECTION 16. Arkansas Code 11-9-514 is amended to read as follows:

31 "11-9-514. Medical services and supplies - Change of physician.

32 (a) The employer shall have the right to select the initial primary
33 care physician from amongst those certified as _medical service providers_ by
34 the commission as hereinabove provided. The claimant employee, however, may
35 petition the commission one (1) time only for a change of physician who must

1 also either be certified by the commission and/or is the regular treating
2 physician of employee who maintains the employee_s medical records and with
3 whom the employee has a bona fide doctor/patient relationship demonstrated by
4 a history of regular treatment prior to the onset of the compensable injury,
5 but only if the primary care physician agrees to refer the employee to a
6 certified managed care organization for any specialized treatment, including
7 physical therapy and if such primary care physician agrees to comply with all
8 the rules, terms and conditions regarding services performed by the managed
9 care organization.

10 (b) Treatment or services furnished or prescribed by any physician
11 other than the ones selected according to the foregoing, except emergency
12 treatment, shall be at the claimant's expense.

13 (c) (1) After being notified of an injury, the employer or insurance
14 carrier shall deliver to the employee, in person or by certified or registered
15 mail, return receipt requested, a copy of a notice, approved or prescribed by
16 the commission, which explains the employee's rights and responsibilities
17 concerning change of physician.

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

20 (3) Any unauthorized medical expense incurred after the employee
21 has received a copy of the notice shall not be the responsibility of the
22 employer.

23 (d) A request for a hearing on a change of physicians by either the
24 employer or the injured employee shall be given preference on the commission's
25 docket over all other matters.

26 (e) Cooperation on the part of both the injured employee and the
27 employer in an effort to select another physician is encouraged."
28

29 SECTION 17. Arkansas Code 11-9-516 is hereby amended to read as
30 follows:

31 "11-9-516. Medical services and supplies - Information furnished by
32 provider. (a) Every hospital or other person furnishing the injured employee
33 with medical services shall permit its records to be copied by and shall
34 furnish full information to the commission, the Workers_ Compensation Fraud
35 and Safety Investigation Unit, the employer, the carrier, and the employee,

1 the employee_s representative or the employee_s dependents. The reasonable
2 cost of copies so provided shall be paid by the one requesting them to the
3 health care or medical service provider furnishing them.

4 (b) In order to insure the prompt and correct reporting and payment of
5 compensation for compensable injuries, the commission is authorized to
6 establish rules and regulations governing audits of medical service bills and
7 reports by attending and consultative physicians and other personnel of all
8 medical information relevant to the determination of a claim for benefits
9 under this chapter submitted to the self-insured employer or the carrier. In
10 promulgating such rules and regulations, the commission may consult and confer
11 with physicians and members of medical associations and societies. Such rules
12 and regulations shall include, but not necessarily be limited to:

13 (1) Requiring attending physicians to provide the carrier or
14 self-insured employer a first report of injury within a specified time after
15 the first service has been rendered to the employee.

16 (2) Requiring attending physicians to submit follow-up reports
17 within specified time limits or upon the request of an interested party.

18 (3) Requiring examining physicians to submit their reports
19 within a specified period of time.

20 (4) Requiring carriers and self-insurers to audit billings for
21 all medical services, including hospital services.

22 (5) Such other reporting requirements as the commission may deem
23 necessary to insure that payments of compensation be prompt and that all
24 interested parties be provided information necessary to the prompt
25 determination of claims.

26 (c) No person who, in good faith pursuant to subsection (a) of this
27 section or pursuant to rules and regulations established by the commission
28 pursuant to subsection (b) of this section, reports medical information shall
29 incur legal liability for the disclosure of such information."
30

31 SECTION 18. Arkansas Code 11-9-519 is hereby amended to read as
32 follows:

33 "11-9-519. Compensation for disability - Total disability.

34 (a) In case of total disability, there shall be paid to the injured
35 employee during the continuance of the total disability sixty-six and

1 two-thirds percent (66 2/3%) of his average weekly wage.

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

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

7 (d) No more often than annually the carrier or self-insured employer
8 may require an injured worker receiving permanent total disability benefits
9 to, as of the date thereof, certify that he/she is permanently and totally
10 disabled and not gainfully employed. Notice of such requirement shall be made
11 by certified mail. Failure of the employee to so certify within thirty (30)
12 days after receipt of such notice shall permit the discontinuance of benefits
13 without penalty until otherwise ordered by the commission."
14

15 SECTION 19. Arkansas Code 11-9-525 is amended to read as follows:

16 "11-9-525. Compensation for disability - Second injuries.

17 (a) (1) The Second Injury Trust Fund established in this chapter is a
18 special fund designed to insure that an employer employing or retaining a
19 handicapped worker will not, in the event the worker suffers an injury or
20 subsequent injury on the job, be held liable for a greater disability or
21 impairment than actually resulted from the last compensable injury.

22 (2) The employee is to be fully protected in that the Second Injury Fund
23 pays the worker the difference between the employer's liability and the
24 balance of his disability or impairment which results from all disabilities or
25 impairments combined.

26 (3) It is intended that latent conditions which are not known to the
27 employee or employer not be considered previous disabilities or impairments
28 which would give rise to a claim against the Second Injury Fund.

29 (4) For purposes of this section, _impairment_ means _anatomical
30 _impairment_ and refers to a medical determination of physical or mental
31 deficits, regardless of cause. _Disability_ refers to incapacity to earn, in
32 the same or other employment, the wages which the employee was receiving at
33 the time of the injury. In regard to these definitions, there shall be no
34 distinction whether the previous disability or impairment resulted from a job
35 related or non-job related injury or condition.

1 (b) (1) Commencing January 1, 1981, all cases of permanent disability
2 or impairment where there has been previous disability or impairment shall be
3 compensated as herein provided.

4 (2) Compensation shall be computed on the basis of the average
5 earnings at the time of the last injury.

6 (3) If any employee who has a permanent partial disability or
7 impairment, whether from compensable injury or otherwise, receives a
8 subsequent compensable injury resulting in additional permanent partial
9 disability or additional impairment so that the degree or percentage of
10 disability or impairment caused by the combined disabilities or impairments is
11 greater than that which would have resulted from the last injury, considered
12 alone and of itself, and if the employee is entitled to receive compensation
13 on the basis of combined disabilities or impairments, then the employer at the
14 time of the last injury shall be liable only for the degree or percentage of
15 disability or impairment which would have resulted from the last injury had
16 there been no preexisting disability or impairment.

17 (4) After the compensation liability of the employer for the last injury,
18 considered alone, which shall be no greater than the actual anatomical
19 impairment resulting from the last injury, has been determined by an
20 administrative law judge or the commission, the degree or percentage of
21 employee's disability that is attributable to all injuries or conditions
22 existing at the time the last injury was sustained shall then be determined by
23 the administrative law judge or the commission, and the degree or percentage
24 of disability or impairment which existed prior to the last injury plus the
25 disability or impairment resulting from the combined disability shall be
26 determined, and compensation for that balance, if any, shall be paid out of
27 the Second Injury Trust Fund provided for in subchapter 3 of this chapter.

28 (5) If the previous disability or impairment, whether from compensable
29 injury or otherwise, and the last injury together result in permanent total
30 disability, the employer at the time of the last injury shall be liable only
31 for the actual anatomical impairment resulting from the last injury considered
32 alone and of itself. However, if the compensation for which the employer at
33 the time of the last injury is liable is less than the compensation provided
34 in §§ 11-9-501 - 11-9-506 for permanent total disability, then, in addition to
35 the compensation for which the employer is liable and after the completion of

1 payment of compensation by the employer, the employee shall be paid the
2 remainder of the compensation that would be due for permanent total disability
3 under §§ 11-9-501 - 11-9-506 out of the Second Injury Trust Fund.

4 (6) The State Treasurer shall be the custodian of the Second Injury Trust
5 Fund and any interest accruing shall be added thereto.

6 (7) The Arkansas Workers_ Compensation Commission shall direct the
7 distribution of the funds from the Second Injury Trust Fund.

8 (c)(1) In all cases in which a recovery against the Second Injury Trust
9 Fund is sought for permanent partial disability or for permanent total
10 disability, the State Treasurer as custodian shall be named as a party and
11 shall be entitled to defend against the claim.

12 (2) The State Treasurer, with the advice and consent of the Attorney
13 General of Arkansas, may enter into settlements as contemplated by §§ 11-9-804
14 and 11-9-805.

15 (3) All awards for permanent partial disability or for permanent total
16 disability affecting the Second Injury Trust Fund shall be subject to the
17 provisions of the Arkansas Workers_ Compensation Law governing review and
18 appeal.

19 (d)(1) If more than one (1) injury in the same employment causes
20 concurrent temporary disabilities, weekly benefits shall be payable only for
21 the longest and largest paying disability.

22 (2) If more than one (1) injury in the same employment causes concurrent
23 and consecutive permanent partial disability, weekly benefits for each
24 subsequent disability shall not begin until the end of the compensation period
25 for the prior disability."

26

27 SECTION 20. Arkansas Code 11-9-527(a) is amended to read as follows:

28 "11-9-527. Compensation for death.

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

32

33 SECTION 21. Subchapter 5 of Chapter 9 to Title 11 of the Arkansas Code
34 is amended by adding the following new section:

35 "11-9-530. Required medical examination; claimant_s duty to reduce

1 disability.

2 (1) (a) If requested by the carrier or self-insured employer,
3 the commission may require any employee entitled to receive compensation under
4 this chapter to submit to a medical examination from an independent medical
5 examiner chosen by the commission at a time and from time to time at a place
6 reasonably convenient for the employee and as may be provided by the rules of
7 the commission. However, no more than three (3) examinations may be requested
8 except after notification to and authorization by the commission. If the
9 employee refuses to submit to any such examination, or obstructs the same, the
10 rights of the employee to compensation shall be suspended with the consent of
11 the commission until the examination has taken place, and no compensation
12 shall be payable during or for account of such period.

13 (b) The insurer or self-insured employer shall pay the
14 costs of the medical examination and related services which are reasonably
15 necessary to allow the employee to submit to any examination requested under
16 this section. As used in this subsection, _related services_ includes, but is
17 not limited to, child care, travel, meals, lodging and an amount equivalent to
18 the employee_s net lost wages for the period during which the worker is
19 absent. A claim for _related services_ described in this section shall be
20 made in the manner prescribed by the commission.

21 (2) For any period of time during which any employee commits
22 insanitary or injurious practices which tend to either imperil or retard
23 recovery of the employee, or refuses to submit to such medical or surgical
24 treatment as is reasonably necessary to promote recovery, or fails to
25 participate in a program of physical rehabilitation as is reasonably necessary
26 to promote recovery, the right of the employee to compensation shall be
27 suspended with the consent of the commission, and no payment shall be made for
28 such period. The period during which such worker would otherwise be entitled
29 to compensation may be reduced with the consent of the commission to such an
30 extent as the disability has been increased by such refusal.

31 (3) An employee who has received an award for unscheduled permanent
32 total or unscheduled partial disability should be encouraged to make a
33 reasonable effort to reduce the disability; and the award shall be subject to
34 periodic examination and adjustment in conformity with A.C.A. § 11-9-522.

35 (4) When the employer of an injured employee or the employer_s insurer

1 determines that the injured employee has failed to follow medical advice from
2 the attending physician or has failed to participate in or complete physical
3 restoration programs prescribed for the employee, the employer or insurer may
4 petition the commission for reduction of any benefits awarded the employee.
5 Notwithstanding any other provision of this chapter, if the commission finds
6 that the employee has failed to accept treatment as provided in this
7 subsection, the commission may reduce any benefits awarded the worker by such
8 amount as the commission considers appropriate.

9 (5) An insurer or self-insured employer shall cease making temporary
10 total disability payments and shall commence making payment of such amounts as
11 are due as temporary partial disability when an injured employee refuses wage
12 earning employment prior to claim determination and the employee_s attending
13 physician, after being notified by the employer of the specific duties to be
14 performed by the injured employee, agrees that the injured employee is capable
15 of performing the employment offered.

16 (6) Any party may request a hearing on any dispute under this section
17 pursuant to A.C.A. § 11-9-704 and such regulations as the commission may
18 promulgate in this regard."
19

20 SECTION 22. Arkansas Code 11-9-702 is amended by adding subsections (f)
21 and (g) to read as follows:

22 "(f) A latent injury or condition shall not delay or toll the
23 limitation periods specified in this section. However, this subsection shall
24 not apply to the limitation for occupational diseases specified in subsection
25 (a) (3).

26 (g) The purpose of this chapter is to provide for a timely filing and
27 resolution of claims for benefits. In order to effectuate that purpose, this
28 section is to be construed in favor of the running of the statute of
29 limitations."
30

31 SECTION 23. Subchapter 7 of Chapter 9 of Title 11 of the Arkansas Code
32 is amended to read as follows:

33 "11-9-717. Lien on Workers_ Compensation Awards for Insurers. Notice
34 of Lien.

35 (a) For purposes of this section, _controverted claim_ means any claim

1 in which compensation is denied either in whole or in part by the workers_
2 compensation carrier or the employer, if self-insured.

3 (b) Any insurer, hospital or medical service corporation or employee
4 welfare benefit plan which furnished benefits or services under a health care
5 service plan or an individual or group disability policy (including but not
6 necessarily limited to a loss-of-income policy, an individual or group
7 accident, health or accident and health policy, a self-insured employee
8 welfare benefit plan, or a hospital or medical service plan contract) to any
9 person suffering an injury or illness covered by the Workers_ Compensation Act
10 has a lien on the proceeds of any final award made by the Commission, less
11 attorneys' fees approved by the Commission and reasonable costs related to the
12 proceeding, to the extent of benefits paid or services provided for the
13 effects of the injury or illness determined to be arising out of and in the
14 course of employment as a result of a controverted claim; provided such plan,
15 policy or contract provides for reduction, exclusion, or coordination of
16 benefits of the policy or plan on account of workers_ compensation benefits.

17 (c) The lien shall arise at the time such benefits are paid or such
18 services are rendered. The person or entity furnishing such benefits or
19 services shall, prior to the payment of any award by the employer or carrier,
20 serve written notice upon the employee, the carrier providing workers_
21 compensation benefits, or the employer, if self-insured, and the Workers_
22 Compensation Commission setting forth the nature and extent of the lien
23 allowable under subsection (b). If notice is received prior to the time the
24 award is paid by the employer or carrier, the lien shall be effective against
25 any workers_ compensation award made after the notice is received.

26 (d) The written notice shall be served upon the employee at his
27 last-known address, the insurance company at its principal place of business
28 in this state or the employer, if self-insured, at its principal place of
29 business, and the Commission. Service shall be made to all parties by
30 certified or registered mail. The notice shall be in duplicate and shall
31 contain, in addition to the information set forth in subsection (c) of this
32 section, the name of the company providing workers_ compensation benefits, the
33 amount expended and an estimate of the amount to be expended for benefits or
34 services provided to such injured or ill employee.

35 (e) The insurance company providing workers_ compensation coverage or

1 the employer, if self-insured, shall reimburse the insurance company, hospital
2 or medical service directly, to the extent of such lien. The receipt of such
3 reimbursement by such insurer, hospital or medical service corporation or
4 employee welfare benefit plan shall fully discharge such lien.

5 (f) The validity or amount of the lien may be contested by the workers_
6 compensation carrier, the employer, if self-insured, or the employee in a
7 proceeding before an administrative law judge."

8

9 SECTION 24. The Arkansas Code is amended by the addition of the
10 following language to be codified at Section 11-9-718, as follows:

11 "11-9-718. Creation of Court and Jurisdiction.

12 (1) There is hereby created, pursuant to the authority of Amendment 58
13 of the Constitution of the State of Arkansas, a separate division of the
14 Arkansas Court of Appeals which shall be known as the Arkansas Court of
15 Appeals, Industrial Division. The Industrial Division shall hear all cases
16 involving decisions from the Arkansas Workers_ Compensation Commission,
17 Unemployment Security Board of Review and other industrial related businesses
18 which are appealable to the Court of Appeals pursuant to Rule 29 of the Rules
19 of the Supreme Court and Court of Appeals.

20 (2) Composition and election.

21 (a) The Industrial Division shall be composed of three (3)
22 members to be appointed initially by the Governor. Thereafter, every two (2)
23 years, one (1) of the positions shall be submitted to an election by the
24 people. The order of election for positions shall be determined by lot.

25 (b) All judges of the Industrial Division shall be elected for
26 six (6) year terms.

27 (3) Qualifications. Judges of the Industrial Division shall have the
28 same qualifications as justices of the Supreme Court except they shall be
29 experienced in the area of workers_ compensation, unemployment compensation,
30 industrial related business and/or have substantial knowledge thereof.

31 (4) Location of Court. The Industrial Division shall be located in
32 Little Rock and shall have offices as convenient to the State Capitol and the
33 Law Library in the Justice Building as can be arranged, but the court may sit
34 in any county seat for the purpose of hearing argument in cases before it.

35 (5) Authority of Court. The Industrial Division shall have authority

1 to issue any writs, directives, orders, and mandates that are appropriate, and
2 only those that are appropriate, for the determination of cases within its
3 jurisdiction.

4 (6) Chief Judge. The Chief Justice of the Supreme Court shall
5 designate one (1) of the Judges of the Industrial Division as Chief Judge
6 thereof. The appointment as Chief Judge shall be for a four (4) year term,
7 and the person so named shall be eligible for reappointment, subject to the
8 discretion of the Chief Justice.

9 (7) Special Judges. (a) When a judge of the Industrial Division
10 certifies to the Chief Judge his temporary disability or his disqualification
11 in a particular case, the Chief Judge shall forthwith notify the Chief Justice
12 of the Supreme Court, who shall appoint a special judge to serve, and for such
13 purpose, may appoint a retired justice, or designate a trial judge.

14 (b) Each special judge of the Industrial Division who is not a
15 retired judge or justice, or sitting Judge, appointed under the provisions of
16 subsection (a) of this section shall receive as full compensation of services
17 rendered the sum of one hundred dollars (\$100) for each case in the special
18 justice_s or special Judge_s commission. When the cases are decided, this
19 amount shall be certified by the Clerk of the Supreme Court, after having been
20 approved by the Chief Justice of the Supreme Court."

21

22 SECTION 25. Arkansas Code § 23-67-204 is hereby amended to read as
23 follows:

24 "23-67-204. Plan for coverage.

25 (a) The Arkansas Workers' Compensation Insurance Plan shall give
26 consideration to:

27 (1) The need for adequate and readily accessible coverage;

28 (2) Optional methods of improving the market affected;

29 (3) The need for reasonable underwriting standards;

30 (4) The need for adequate supervisory and servicing procedures to
31 ensure proper operation of the plan;

32 (5) The need to establish procedures that will have minimum
33 interference with the voluntary market;

34 (6) Distributing the obligations imposed by the plan and any
35 profits or losses experienced by the plan equitably and efficiently among the

1 participating insurers, self-insurers and self-insured groups approved by the
2 Workers_ Compensation Commission under § 11-9-404(a)(2); and

3 (7) Establishing procedures for applicants and participants to
4 have their grievances reviewed.

5 (b) The plan shall provide for the issuance of a policy covering the
6 entire liability of the employer as to the business for which workers'
7 compensation insurance has been rejected.

8 (c) The rates and supplementary rate information of the Arkansas
9 Workers' Compensation Insurance Plan shall meet the standards specified in §
10 23-67-108.

11 (d) The plan may obtain reinsurance for any part or all of its risks.

12 (e)(1) The commissioner, at his discretion, is authorized to delegate
13 all, or any part of the commissioner's responsibility to establish and operate
14 the plan; provided however, that any such plan, or plan of operation, and any
15 amendments thereto must receive the prior approval of the commissioner.

16 (2) Any person or entity to whom the establishment,
17 implementation, or operation of the plan is delegated pursuant to this
18 subsection shall file with the commissioner all policy forms, forms, rates, or
19 supplementary rate information necessary to effectuate the plan."

20

21 SECTION 26. All provisions of this act of a general and permanent
22 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
23 Code Revision Commission shall incorporate the same in the code.

24

25 SECTION 27. If any provision of this act or the application thereof to
26 any person or circumstance is held invalid, such invalidity shall not affect
27 other provisions or applications of the act which can be given effect without
28 the invalid provision or application, and to this end the provisions of this
29 act are declared to be severable.

30

31 SECTION 28. All laws and parts of laws in conflict with this act are
32 hereby repealed.

33

34

35

1

/s/Pat Flanagan, et al