

1 **State of Arkansas**  
2 **79th General Assembly**  
3 **Regular Session, 1993**  
4 **By: Senate Judiciary Committee**

# A Bill

**SENATE BILL 583**

## For An Act To Be Entitled

8 "THE WORKERS' COMPENSATION BILL FOR FAIRNESS TO  
9 SUBSTANTIALLY RESTRUCTURE THE WORKERS' COMPENSATION LAWS  
10 TO DECREASE COSTS TO EMPLOYERS WHILE ENCOURAGING INJURED  
11 WORKERS TO RETURN TO THE WORK FORCE; INCLUDING ASPECTS OF  
12 PROPOSALS BY INSURANCE COMMISSIONER DOUGLASS AND  
13 RECOMMENDATIONS OF THE AD HOC STUDY COMMITTEE APPOINTED BY  
14 THE JOINT INTERIM COMMITTEE ON INSURANCE AND COMMERCE; THE  
15 SAME BEING ARKANSAS CODE 11-9-101 THROUGH 11-9-911; AND  
16 FOR OTHER PURPOSES."

## Subtitle

19 "AMENDING THE WORKERS' COMPENSATION LAW IN A FAIR AND  
20 EQUITABLE MANNER TO RESTRUCTURE THE SYSTEM, WHILE  
21 MAKING IT MORE EFFICIENT AND COST EFFECTIVE."

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

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

27 "11-9-101. Title.

28 This chapter shall be cited as the Workers' Compensation Law".

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

32 "11-9-102. Definitions.

33 As used in this chapter, unless the context otherwise requires: (1)

34 Carriers means any stock company, mutual company, or reciprocal or  
35 interinsurance exchange authorized to write or carry on the business of

1 workers' compensation insurance in this state; whenever required by the  
2 context, the term carrier shall be deemed to include duly qualified self-  
3 insureds or self-insured groups;

4 (2) Child means a natural child, a posthumous child, a child legally  
5 adopted prior to injury of the employee, a stepchild, an acknowledged  
6 illegitimate child of the deceased or spouse of the deceased, and a foster  
7 child.

8 (3) Commission means the Workers' Compensation Commission;

9 (4) Commissioner means the Insurance Commissioner of the state of  
10 Arkansas;

11 (5) Compensation means the money allowance payable to the employee or  
12 to his dependents and includes the allowances provided for in 11-9-509 and  
13 funeral expenses;

14 (6) Death means only death resulting from compensable injury, as  
15 defined in subdivision (14) of this section;

16 (7) Department means the Arkansas Insurance Department.

17 (8) Dependent means any of the following-named relatives of an  
18 employee whose death results from any compensable injury and who leaves  
19 surviving no widow, widower or child under the age of eighteen (18) years:  
20 father, mother, grandfather, grandmother, stepfather, stepmother, grandson,  
21 granddaughter, brother, sister, half brother, half sister, niece, or nephew;

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

25 (10) Employee means any person, including a minor, whether lawfully or  
26 unlawfully employed in the service of an employer under any contract of hire  
27 or apprenticeship, written or oral, expressed or implied but excluding one  
28 whose employment is casual and not in the course of the trade, business,  
29 profession, or occupation of his employer., and excluding one who is required  
30 to perform work for a municipality, a county or the state upon being convicted  
31 of a criminal offense. The term employee may also include a sole proprietor  
32 or a partner who devotes full time to the proprietorship or partnership and  
33 who elects to be included in the definition of employee by filing written  
34 notice with the Workers' Compensation Commission., and who obtains therefrom a  
35 Certification of Coverage Under the Workers' Compensation Act; further,

1 however, it is to be understood that any sole proprietor or partnership who  
2 desires not to be included in the definition of employee may file for and  
3 receive a Certificate of Non Coverage Under the Workers' Compensation Act  
4 from the Commission and thereafter, or until he or they elect (s) otherwise,  
5 be conclusively presumed to not be an employee for purposes of the act. If  
6 a sole proprietor or partnership make neither to these elections, they shall  
7 be presumed not to be employees for purposes of the act. No election by  
8 sole proprietor or partnership under this section shall affect the rights or  
9 the coverage under this act of any employees of those sole proprietors or  
10 partners. Any reference to an employee who has been injured, when that  
11 employee is dead, shall also include his legal representative, dependents, and  
12 other persons to whom compensation may be payable;

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

16 (12) Employment means:

17 (A) Every employment carried on in the state in which three (3)  
18 or more employees are regularly employed by the same employer in the course of  
19 business, except:

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

22 (ii) an employee employed to do gardening, maintenance,  
23 repair, remodeling or similar work in or about the private home of the person  
24 employing the employee;

25 (iii) *Agricultural farm labor*;

26 (iv) The State of Arkansas and each of the political  
27 subdivisions thereof, except as provided 6-17-1401 - 6-17-1405, 14-26-101 -  
28 14-26-104, 14-60-101 - 14-60-104, 19-10-101 - 19-10-103, 19-10-202 - 19-10-  
29 210, 19-10-401 - 19-10-406, and 21-5-601 - 21-5-610;

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

33 (vi) *A person performing services for any non-profit,*  
34 *religious, charitable, or relief organization*;

35 (vii) A person performing services for board and lodging

1 received from any non-profit religious, charitable or relief organization, or  
2 a person performing services on a volunteer basis for a non-profit, religious,  
3 charitable or relief organization whether or not such a person receives meals  
4 or lodging or nominal reimbursements or vouchers for meals, lodging or  
5 expenses;

6 (viii) Any person engaged in the vending, selling, offering  
7 for sale, or delivery directly to the general public of any newspapers,  
8 magazines, or periodicals, or any person acting as sales agent or distributor  
9 as an independent contractor of or for any newspaper, magazine, or periodical;

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

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

14 (D) Every employment in which one (1) or more employees are  
15 employed by a subcontractor;

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

18 (14) (A) Injury means only a compensable injury, or death, or  
19 accidental injury to prosthetic appliances, arising out of and in the course  
20 of employment and which, may require medical services or result in disability  
21 or death, including occupational diseases set out in 11-9-601 (e), and is  
22 established by medical evidence supported by a preponderance of the admissible  
23 evidence, subject to the following limitations:

24 (i) No injury or disease is compensable as a consequence of  
25 a compensable injury unless the compensable injury is a contributing cause of  
26 the condition entitling an employee to benefits hereunder:

27 (B) Compensable injury does not include:

28 (i) Injury to any instigating participant in assaults or  
29 combats which amount to a deviation from customary duties;

30 (ii) Injury incurred while engaging in or performing, or as  
31 the result of engaging in performing, any recreational or social activities  
32 solely for the employee's personal pleasure; or

33 (iii) Injury, the cause of which is demonstrated by clear  
34 and convincing evidence to be the injured employee's abuse of alcoholic  
35 beverages or any controlled substance, unless the employer permitted,

1 encouraged or had actual knowledge of such use or consumption; every employee  
2 is deemed by his performance of services to have impliedly consented to  
3 reasonable and responsible random testing by properly trained and certified  
4 medical or on-duty law enforcement personnel, and only for the presence of any  
5 of the aforementioned substances in the employee's body;

6 (iv) Injury which was inflicted upon the employee before the  
7 employee was hired or after the employment relationship was terminated;

8 (15) Medical services means services performed by any practitioner  
9 licensed under the laws of the State of Arkansas relating to the healing arts,  
10 including but not limited to those specified in 11-9-508;

11 (16) Objective findings in support of medical evidence include, but  
12 are not limited to, range of motion, atrophy, muscle strength, muscle spasm  
13 and diagnostic evidence substantiated by clinical findings, and any and all  
14 other signs, symptoms, and findings relied upon by the current edition of the  
15 American Medical Association's Guides to the Evaluation of Permanent  
16 Impairment, and/or the Orthopaedic Association's or Chiropractic Association's  
17 similar publications;

18 (17) Parent means natural parent, adoptive parent, parent-at-law,  
19 grandparent and foster parent;

20 (18) Payroll means a record of wages payable to employees for their  
21 services and includes commissions, value of exchange labor and the reasonable  
22 value of board, rent, housing, lodging or similar advantage received from the  
23 employer, Payroll does not include overtime pay, vacation pay, bonus pay,  
24 amounts payable under profit-sharing agreements or bonus payments to reward  
25 employees for safe work practices. Bonus pay is limited to payments which are  
26 not anticipated under the contract of employment and which are paid at the  
27 sole discretion of the employer. The exclusion from payroll of bonus payments  
28 to reward employees for safe working practices is only for the purpose of  
29 calculations based on payroll to determine premium for workers' compensation  
30 insurance, and specifically does not affect any other calculations or  
31 determinations based on payroll for purposes of this chapter;

32 (19) Physician or Doctor means a person duly licensed to practice  
33 one or more of the healing medical professions as identified at Subtitle 3,  
34 title 17 of Arkansas Code, when acting within limits of the license;

35 (A) Attending physician means a doctor or physician who is

1 primarily responsible for the treatment of an employee's compensable injury;

2 (B) Consulting physician means a doctor or physician who  
3 examines an employee or the employee's medical record to advise the attending  
4 physician regarding treatment of an employee's compensable injury.

5 (20) *Respondent* means an employer insurance carrier and self-insured  
6 employer;

7 (21) State average weekly wage means the State average weekly wage  
8 determined annually by the Director of the Department of Labor in the  
9 preceding calendar year pursuant to 11-10-502. If for any reason, the  
10 determination is not available, the commission shall determine the wage  
11 annually, after reasonable investigation and public hearing.

12 (22) Time of accident or date of accident means the time or date of  
13 the occurrence of the accidental incident from which compensable injury,  
14 disability, or death results;

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

22 (24) *Widow* shall include only the decedent's legal wife, living with  
23 or dependent for support upon him at the time of his death;

24 (25) Widower shall include only the decedent's legal husband, living  
25 with or dependent for support upon her at the time of her death."

26

27 SECTION 3. Arkansas Code 11-9-105 (a) is amended to read as follows:

28 "(a) The rights and remedies granted to an employee subject to the  
29 provisions of this chapter, on account of injury or death covered by this  
30 chapter, shall be exclusion of all other rights and remedies of the employee,  
31 his legal representative, dependents, next of kin, or anyone otherwise  
32 entitled to recover damages from the employer, or any principal, officer,  
33 director, stockholder, or partner acting in their capacity as an employer, on  
34 account of the injury or death, and the negligent acts of a co-employee shall  
35 not be imputed to the employer. The role, capacity, or persona of any

1 employer, principle, officer, director or stockholder other than that existing  
2 in the role of employer of the employee shall be relevant for consideration  
3 for purposes of the act, and the remedies and rights provided by this chapter  
4 shall not be exclusive for the multiple roles, capacities, or personas the  
5 employer may be deemed to have."

6

7 SECTION 4. Arkansas Code 11-9-106 is amended to read as follows:

8 "11-9-106. Penalties for misrepresentation.

9 (a) Any party who willfully and knowingly makes any false or misleading  
10 statement or representation for the purpose of obtaining any benefit or  
11 payment, or for the purpose of charging or paying any premium, or for the  
12 purpose of defeating or *limiting* any claim for benefit or payment, under this  
13 chapter, shall be subject to all civil liabilities including but not limited  
14 to a one thousand dollar (\$1000.00) discretionary fine payable to the injured  
15 party(s), which shall be enforceable as a compensation order as set forth in  
16 A.C.A. 11-9-712; and *guilty of a misdemeanor punishable by imprisonment not*  
17 *to exceed one (1) year.*"

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

22 (c) Where the commission or the insurance commissioner finds that false  
23 or misleading statements or representations were made willfully and knowingly  
24 for the obtaining benefits or payments, or for the purpose of defeating or  
25 *limiting* any claim for benefit or payment, under this chapter, the chairman  
26 of the commission and/or the insurance commissioner shall refer the matter for  
27 appropriate action to the prosecuting attorney of the district where the  
28 original hearing was held impose such additional discretionary fines, which  
29 shall be enforceable as a compensation order as set forth in A.C.A. 11-9-712.

30 (d) (1) There shall be established within the Arkansas Insurance  
31 Department a Workers' Compensation Fraud Unit, which will be headed and  
32 supervised by a director who shall have no fewer than three (3) years  
33 experience in law enforcement and a Bachelor's Degree in Criminal Justice or  
34 Criminal Science, or the equivalent, or alternatively a law degree, who shall  
35 in turn report to and be subject to the supervision of the Insurance

1 Commissioner. The Workers' Compensation Fraud Investigation Unit (hereafter  
2 designated as The Fraud Unit), herein designated will specifically deal only  
3 with Workers' Compensation Fraud. Such employees hired to pursue the purposes  
4 of The Fraud Unit will be solely utilized for workers' compensation  
5 investigation and no other purposes.

6 (2) The Insurance Commissioner, his deputies and assistants and the  
7 Fraud Unit Director and his deputy shall be vested with the power of enforcing  
8 this section and to render more effective the disclosure and apprehension of  
9 persons who abuse the workers' compensation system as established by the  
10 General Assembly by making false or misleading statements for the purpose of  
11 either obtaining, wrongfully increasing, capriciously delaying, or defeating  
12 the payment of benefits.

13 (3) It shall be the duty of The Fraud Unit to assist the Insurance  
14 Commissioner and the department in the performance of their duties, and  
15 further, to:

16 (A) Determine the identity of either carriers, employers, or  
17 employees who, within the State of Arkansas have violated the provisions of  
18 Arkansas Code Annotated 11-9-409 and subdivisions of (a), (b), and/or (c) of  
19 this section, and to report same to the Workers' Compensation and to the  
20 Insurance Commissioner, who shall, in turn, be responsible for reporting same  
21 to the prosecuting attorney of the district in which the offender resides.

22 (B) With respect to the subject of any investigation or hearing  
23 being conducted by the Workers' Compensation Commission, the Insurance  
24 Commissioner, his deputies or assistants, and the Fraud Unit Director shall  
25 have the power of subpoena and may subpoena witnesses and administer oaths or  
26 affirmations and examine any individual under oath and may require and compel  
27 the production of records, books, papers, contracts and other documents.

28 (4) Witness fees, mileage, and the actual expense necessarily incurred  
29 in securing attendance of witnesses and their testimony shall be itemized and  
30 shall be paid by the person(s) being investigated if that person(s) is found  
31 to have been in violation of the law, or paid by that person(s) at whose  
32 request the hearing is held.

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

35 (A) If any individual fails to obey a subpoena issued and served



1 pursuant to this section with respect to any matter concerning which he may be  
2 lawfully interrogated, upon application of the Insurance Commissioner or Fraud  
3 Director, the circuit court of the county in which the proceedings are pending  
4 wherein the individual is required to appear, may issue an order requiring the  
5 individual to comply with said subpoena.

6 (B) Any failure to obey the order of the court may be punished by  
7 the court as being in contempt of court.

8 (6) Any person giving false testimony under oath or affirmation in this  
9 state as to any matter relevant to any investigation or hearing pursuant to  
10 this section, shall be liable to conviction for the crime of perjury and  
11 punished accordingly.

12 (7) Every carrier, employer, or employee who has reason to suspect that  
13 a violation of A.C.A. 11-9-106(a) has occurred shall be required to report all  
14 pertinent matters relating thereto to The Fraud Unit. None of the  
15 aforementioned parties shall be responsible to any of the other aforementioned  
16 parties for any such report. Any such carrier, employer, or employee who  
17 knowingly fails to report any such violation shall be guilty of a misdemeanor  
18 *punishable by a fine not to exceed one thousand dollars (\$1,000) or by*  
19 *imprisonment for a period not to exceed one (1) year, or both.*

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

25 (9) Any prosecuting attorney of any district to whom an alleged  
26 violation of A.C.A.11-9-106(a), 11-9-402(c), and 11-9-406 has been referred  
27 shall, for the purpose of assisting in prosecutions pursuant to those  
28 sections, have the authority to appoint as special assistant prosecutor(s) any  
29 attorney, duly licensed in the State of Arkansas, in the employment of the  
30 Insurance Department's Fraud Unit. Such special assistant prosecutors shall  
31 be responsible to and report to that prosecuting attorney by whom appointed,  
32 for the duration of the proceedings of any prosecution pursuant to the  
33 aforementioned sections.

34 (10) The Fraud Director or any member of The Fraud Unit, shall provided  
35 testimony as requested by all pertinent *parties*, including, but not limited

1 to, the Workers' Compensation Commission, the Administrative Law Judges, and  
2 any prosecuting attorney while prosecuting violations of this section.

3 (11) The Insurance Commissioner, with the cooperation and assistance of  
4 the Workers' Compensation Commission, is authorized to establish such rules  
5 and regulations as may be necessary to carry out the provisions of this  
6 section.

7 (12) Notwithstanding any other provision of law, it is the specific  
8 intent of this section that all investigatory files as maintained by the  
9 Insurance Commissioner or The Fraud Unit, shall be deemed *privileged* and shall  
10 not be open to the public until such matter(s) under investigation is closed  
11 by the Fraud Director with permission of the Insurance Commissioner, or  
12 prosecution has been completed.

13 (13) It is to be understood that any person with whom any person as  
14 identified in section 11-9-106(a) hereinabove conspires for the purpose of  
15 obtaining any benefit or payment, or for the purpose of defeating or *limiting*  
16 any claim for benefit or payment shall, by reason of such conspiracy, be  
17 guilty as a principal of a Class D felony."

18

19 SECTION 5. Arkansas Code 11-9-107 is hereby amended to read as follows:

20 "11-9-107. Penalties for discrimination for filing claim.

21 Any employer who discriminates in regard to the hiring or tenure of work  
22 or any term or condition of work of any individual on account of his claiming  
23 benefits under this chapter, or who in any manner obstructs or impedes the  
24 filing of claims for benefits under this chapter, shall be subject to all  
25 civil liabilities including but not limited to a one thousand dollar (\$1000)  
26 discretionary fine which shall be enforceable as set forth in 11-9-712."

27

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

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

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

1 death. (2) If an employee employed in this State temporarily leaves the  
2 State incidental to that employment and receives a compensable injury, the  
3 employee is entitled to the benefits of this chapter as though the employee  
4 received the compensable injury within this State."

5

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

7 "11-9-402. Liability of prime contractors and subcontractors - Sole  
8 proprietorships or partnerships.

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

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

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

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

21 (c) (1) When a sole proprietorship or partnership fails to elect to  
22 cover the sole proprietor or partners under this chapter, the prime contractor  
23 is not liable under this chapter for injuries sustained by the sole proprietor  
24 or partners if the sole proprietor or partners are not employees of the prime  
25 contractor. A sole proprietor or the partners of a partnership who do not  
26 elect to be covered by the Workers' Compensation Law and be deemed employees  
27 thereunder and who deliver to the prime contractor a Certificate of Non-  
28 Coverage issued by the Workers' Compensation Commission shall be conclusively  
29 presumed to not be covered by the Law or to be employees of the prime  
30 contractor; this provision shall not effect the rights or coverage of any  
31 employees of the sole proprietor or of the partnership.

32 (2) Furthermore, the prime contractor's insurance carrier is not  
33 liable for injuries to the sole proprietor or partners described above, who  
34 have provided a Certification of Non-Coverage, and the carrier shall not  
35 include compensation paid by the prime contractor to the sole proprietor

1 partners described above in computing the insurance premium for the prime  
2 contractor. Any prime contractor who, after being presented with a  
3 Certification of Non-Coverage by a sole proprietor or partnership, nonetheless  
4 compels the sole proprietorship or partnership to pay or contribute to  
5 Workers' compensation coverage of that sole proprietor or partnership shall be  
6 guilty of a Class D felony; further, any prime contractor who compels a sole  
7 proprietor or partnership to obtain a Certification of Non-Coverage when the  
8 sole proprietor or partnership does not desire to do so, is guilty of a Class  
9 D felony."

10

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

12 "11-9-406. Failure to secure payment of compensation - Penalty.

13 (a) Any employer required to secure the payment of compensation under  
14 this chapter who fails to secure compensation shall be subject to all civil  
15 liabilities and which shall be enforceable as a compensation order as set  
16 forth in hereinafter in 11-9-712(b). This subsection shall not effect any  
17 other liability of the employer under this act.

18 (b) (1) Whenever the Commission has reason to believe that any employer  
19 required to secure the payment of compensation under this chapter has failed  
20 to do so, the Executive Director of the Workers' Compensation Commission shall  
21 serve upon such employer a proposed order declaring the employer to be in  
22 violation of this chapter and containing the amount, if any, of the civil  
23 penalty to be assessed against the employer pursuant to subsection (5) of this  
24 section.

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

1           (3) If the employer alleges that a carrier has contracted to provide it  
2 workers' compensation insurance coverage for the period in question, the  
3 employer shall include such allegation in its request for hearing and shall  
4 name the carrier. The Commission shall promptly notify such carrier of the  
5 employer's allegation and of the date of hearing. The carrier shall promptly,  
6 and no later than five (5) days prior to the hearing, respond in writing to  
7 the employer;s allegation by providing evidence of coverage for the period in  
8 question or by affirmatively denying the employer's allegation.

9           (4) Hearings conducted pursuant to this section shall proceed as  
10 provided in 11-9-704 - 11-9-711.

11           (5) The Executive *Director* of the Workers' Compensation Commission may  
12 assess a civil penalty against an employer who fails to secure the payment of  
13 compensation in an amount up to one thousand dollars (\$1,000) per day of  
14 violation which shall be enforceable as a compensation order. When an order  
15 assessing a civil penalty becomes final by operation of law or on appeal,  
16 unless the amount of penalty is paid within 10 days after the order becomes  
17 final, it constitutes a judgment and may be recorded with the circuit clerk in  
18 any county of this state. The clerk shall thereupon record the name of the  
19 person incurring the penalty and the amount of the penalty in the Circuit  
20 Clerk Lien Record. The penalty provided in the order so recorded shall become  
21 a lien upon the title to any interest in property owned by the person against  
22 whom the order is entered, and execution may be issued upon the order in the  
23 same manner as execution upon a judgment of a court of record.

24           (6) Civil penalties, and judgments entered thereon, due to the  
25 Executive Director under this section from any person shall be deemed  
26 preferred to all general claims in all bankruptcy proceedings, trustee  
27 proceedings, and proceedings for the administration of estates and  
28 receiverships involving the person liable therefor or the property of such  
29 person.

30           (7) If an employer fails to secure the payment of compensation or pay  
31 any civil penalty assessed after an order issued pursuant to this section has  
32 become final by operation of law or upon appeal, the Commission may petition  
33 the *Chancery Court* of Pulaski County for an order enjoining the employer from  
34 engaging in further employment until such time as the employer secures the  
35 payment of compensation and/or makes full payment of all civil penalties."

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

"11-9-408. Insurance policies.

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

(1) Provisions that identify the insured employer and either identify each covered employee or describe covered employees by class or type of labor performed and the estimated number of employees of each such class or type. Notwithstanding any other provision of this chapter, the executive director may certify five or more employers as a self-insured group, which shall be considered an employer for purposes of this chapter, if the Workers' Compensation Commission finds that the employers as a group meet the requirements of self-insured employers of this state.

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

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

(4) Such other provisions as the Department allows or requires carriers to include in workers' compensation policies.

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

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

(B) An employer may cancel coverage effective less than thirty (30) days after written notice is received by the carrier where the

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

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

17           (3) If, before the effective date of cancellation where the  
18 carrier issues notice of cancellation, the employer gives notice to the  
19 carrier that it has not obtained coverage from another carrier and intends to  
20 become insured under the Arkansas Workers' Compensation Insurance Plan  
21 *hereinafter referred to as 'the Plan'*, the carrier shall insure that  
22 continuing coverage is provided to the employer by transferring the employer  
23 to the Plan as of the effective date of  
24 cancellation. If the carrier is a servicing carrier under the Plan, it shall  
25 continue to provide coverage for the employer in the normal course of  
26 administering the Plan. Nothing in this subsection is intended to limit the  
27 authority of Plan Administrators to require the employer to provide deposits  
28 or to make payments consistent with Plan requirements.

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

1 concerned and does not unduly or improperly affect the continuity of workers'  
2 compensation coverage by seriously and negatively affecting other carriers and  
3 agents with outstanding policies issued to any of the employers in issue. As  
4 to any questions of liability between the employer and the carrier, the  
5 provisions of Arkansas law or contracts shall govern."  
6

7 SECTION 10. Arkansas Code 11-9-409, amended to read as follows:

8 "11-9-409. Safety and health loss control; consultative services;  
9 voluntary compliance.

10 (a) (1) The Executive Director of the Commission, in cooperation and with  
11 the assistance of the Insurance Department and Labor Department, in order to  
12 carry out the purposes of this section and encourage voluntary compliance with  
13 occupational safety and health laws, regulations and standards, and to promote  
14 more effective workplace health and safety programs, shall:

15 (A) Develop greater knowledge and interest in the causes and  
16 prevention of industrial accidents, occupational diseases and related subjects  
17 through (a) research, conferences, lectures and the use of public  
18 communications media, (b) the collection and dissemination of accident  
19 statistics and (c) the publication and distribution of training and accident  
20 prevention including audio and visual aids.

21 (B) Appoint advisors who shall, without compensation, assist  
22 the *Department of Labor* in establishing standards of safety and health. The  
23 *Department of Labor* may adopt and incorporate in its regulations, rules and  
24 standards such safety and health recommendations as it may receive from such  
25 advisors, *in cooperation and with the assistance of the Arkansas Department of*  
26 *Labor*.

27 (C) Provide consultative services for employers on safety  
28 and health matters and prescribe procedures which will permit any employer to  
29 request a special inspection or investigation, focused on specific problems or  
30 hazards in the place of employment of the employer or to request assistance in  
31 developing a plan to correct such problems or hazards, which will not directly  
32 result in a citation and civil penalty.

33 (D) Place emphasis, in the research, education and  
34 consultation program, on development of a model for providing services to  
35 groups of small employers, in particular industries and their employees.



1 (E) Separately administer the voluntary compliance and  
2 research, education and consultation activities described in this section and  
3 the enforcement activities as directed by statute.

4 (2) The Executive Director of the Commission, with the cooperation  
5 and assistance of the Insurance Department and Labor Department, is authorized  
6 and directed to establish rules and regulations for the provision of: (i)  
7 safety and health loss control consultative services for the specific and  
8 continuing purpose of increasing the awareness of employers and employees to  
9 dangers in the workplace environment; and (ii) safety and health loss control  
10 surveys for the purpose of identifying and remedying those aspects of each  
11 employers workplace which pose a clear and unreasonable risk of injury to its  
12 employees. The Legislature recognizes that workplace safety is a critical  
13 element in the well-being of each and every employee in the State and in the  
14 States's economic well-being, and, further, it is determined that each may be  
15 improved by mandatory and continuing educational programs which will enhance  
16 both employees' and employers' awareness of dangers posed by the workplace  
17 environment and which will also demand that clear and unreasonable risks of  
18 injury be removed from their environment, or modified so as to remove such  
19 risks from their environment, or that clear notice be posted to employees that  
20 such danger is present in the work environment.

21 (3) A carrier that issues a policy or contract of insurance to  
22 employers under this chapter shall furnish in accordance with the rules and  
23 regulations to be established, occupational safety and health loss control  
24 consultative and educational program services to its insured employers which  
25 are pertinent and reasonably applicable to each employer's business. Further,  
26 each such carrier shall cause a workplace safety and loss control survey to be  
27 conducted upon the premises of each insured employer in accordance with the  
28 dictates of said rules and regulations. Such survey shall identify health and  
29 safety problems that pose a clear and unreasonable risk of injury to  
30 employees, and shall include a review of employer injury records with  
31 appropriate persons and development of plans for the establishment or  
32 improvement of employer safety and health loss control programs. Such  
33 information from the survey shall be fully disclosed in writing to any and  
34 all employees who are directly affected or exposed to those unreasonable risks  
35 or health and safety problems, to maximally ensure the employee safety

1 awareness. At the time a policy or contract of insurance is issued, and on an  
2 annual basis thereafter, the carrier shall notify its insured employers of the  
3 loss control consultative services the carrier is required to offer and shall  
4 provide to the employer a written description of those services.

5 (4) (A) A self-insurer shall establish and implement an  
6 occupational safety and health loss control surveys of the work environment in  
7 a manner consistent with the rules and regulations to be established by the  
8 Executive Director.

9 (B) A carrier or self-insurer may furnish any of the  
10 services required by this section through an independent contractor.

11 (C) The carrier shall not charge the employer any fee *nor in*  
12 *any way increase insurance premiums, because of or for* safety and health loss  
13 control consultative services.

14 (D) Each insurer shall make available, at the request of the  
15 Executive Director and in the form prescribed by the Executive Director, its  
16 actual annual expenditures for safety and health loss control activities for  
17 the prior year and it's budget for safety and health loss control activities  
18 for the following year.

19 (5) (A) The Executive Director may assess a civil penalty against  
20 an employer who fails to utilize the loss control consultative services  
21 offered or against any self-insurer or self-insured group who fails to  
22 establish and implement an occupational and safety health loss control  
23 program. Within ten (10) days after the date of receipt of notice of failure  
24 to utilize said services, the employer, self-insurer, or self insured group  
25 shall send to the Executive Director a report setting forth:

26 (i) the name, address and business of the employer;

27 (ii) the name, address and source of the loss control  
28 consultative services which will be utilized;

29 (iii) the date such loss control consultative services  
30 will be rendered.

31 (iv) such other information as may be required by the  
32 Executive Director.

33 (B) The Executive Director shall also require any employer, self-  
34 insurer, or self-insured group to submit a follow-up report within ten (10)  
35 days following the utilization of a loss control consultative service, setting

1 forth the establishment and implementation of an occupational and safety  
2 health loss control program.

3           (6) Any employer, self-insured carrier, or self-insured group who  
4 fails or refuses to send any report required of him by this subsection shall  
5 be subject to civil penalty not exceeding \$1000 for each failure or refusal.  
6 If an employer, self-insured carrier, or self-insured group fails to pay any  
7 civil penalty assessed there against after an order issued pursuant to the  
8 section has become final by operation of law, that order shall become  
9 enforceable as a compensation order as set forth in A.C.A. 11-9-409.

10           (7) The Executive Director shall assess against any carrier or  
11 self-insured employer who fails to comply with this section a civil penalty of  
12 \$250 per day for each day such failure continues. The Executive Director  
13 shall forward to the Insurance Department or the Department of Labor any  
14 information concerning a carrier's failure to furnish occupational safety and  
15 health loss control and workplace survey services required by this section.

16           (8) All knowledge, information and documentation gathered during  
17 a workplace safety and loss control survey undertaken through either the state  
18 voluntary safety program or a carrier's voluntary safety program as described  
19 herein, shall be held to be *privileged*.

20           (9) *Any party may request a hearing on any dispute under this*  
21 *section pursuant to Arkansas Code 11-9-704."*

22

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

24           "§11-9-505. Additional compensation - Rehabilitation.

25           (a) In addition to benefits otherwise provided for by this chapter, an  
26 employee who is entitled to receive compensation benefits for permanent  
27 disability shall be paid reasonable expenses of travel and maintenance and  
28 other necessary costs of a program of vocational rehabilitation if the  
29 commission finds that the program is reasonable in relation to the disability  
30 sustained by the employee. The employer's responsibility for additional  
31 payments shall not exceed fifty two (52) weeks, or may be extended to eighty  
32 six (86) weeks for good cause shown, regardless of the length of the program  
33 requested.

34           (b) The employee shall not be required to enter any program of  
35 vocational rehabilitation against his consent, *nor have other benefits reduced*

1 for choosing to not accept rehabilitation benefits.

2 (c) A request for the program, if elected by the claimant, must  
3 ordinarily be filed with the commission prior to a determination of the amount  
4 of permanent disability benefits payable to the employee, or that  
5 determination must be reopened for good cause shown.

6 (d) In addition to the benefits previously enumerated in this section,  
7 an employee, if not working or receiving other weekly benefits under this  
8 chapter, shall be entitled to payment of his regular weekly benefit rate  
9 commencing on the date a request for rehabilitation program is received by the  
10 commission, carrier, or employer and continuing during the period the parties  
11 are exploring rehabilitation potential.

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

15 (2) For this purpose the *respondent* shall contact a worker with a  
16 claim for a permanent disabling compensable injury for evaluation of the  
17 worker's eligibility for vocational assistance within five days of:

18 (A) Having knowledge of the workers likely eligibility for  
19 vocational assistance, from a medical or investigation report, notification  
20 from the worker, or otherwise; or

21 (B) The time the worker has reached the end of the healing  
22 period, if the worker has not returned to the worker's regular employment or  
23 other suitable employment with any employer at the time of injury and the  
24 worker is not receiving vocational assistance.

25 (C) Likely eligibility may be redetermined by the *respondent*  
26 or *Commission* upon receipt of new information that would change the  
27 eligibility determination.

28 (f) As soon as possible, and not more than 30 days after the contact  
29 required by subsection (1) of this section, the carrier or self-insured  
30 employer shall determine whether the worker is eligible for vocational  
31 assistance. The carrier or self-insured employer shall notify the worker of  
32 the decision regarding the worker's eligibility for vocational assistance. If  
33 the carrier or self-insured employer decides that the worker is not eligible  
34 the worker may apply to the Commission for review of the decision as provided  
35 in A.C.A. & 11-9-711. A worker determined ineligible upon evaluation under

1 subparagraph (B) or paragraph (b) of subsection (1) of this section may not be  
2 found eligible thereafter unless that eligibility determination is rejected by  
3 the Commission under A.C.A. & 11-9-711 or the worker's condition worsens  
4 substantially as a result of the compensable injury, or its' combination with  
5 other impairments.

6 (g) The objectives of vocational assistance are to return the worker to  
7 employment which is as close as possible to the worker's regular employment or  
8 to other suitable employment as hereinafter defined.

9 (h) (1) A worker is eligible for vocational assistance if the worker  
10 will not be able to return to the previous employment or to any other  
11 available and suitable employment offered him with any employer, and if the  
12 worker has a permanent disabling compensable injury and a substantial handicap  
13 to employment. Any worker who *is able to return to his previous employment*  
14 shall not be eligible for vocational assistance.

15 (2) A substantial handicap to employment exists when the worker,  
16 lacks the necessary physical abilities, knowledge, or educational level and  
17 job skills to be employed in suitable employment.

18 (3) Suitable employment means:

19 (A) Employment of the kind for which the worker has the  
20 necessary physical *and psychological* abilities, educational level and job  
21 skills:

22 (B) Employment that is located where the worker  
23 customarily worked or is within a reasonable commuting distance of the  
24 worker's residence; and

25 (C) Employment that produces a wage that is comparable,  
26 based on the cost of living, to that currently being paid for employment, as  
27 well as benefits consistent with those being provided by the employer of  
28 injury.

29 (i) Vocational evaluation, assistance in maintaining current  
30 employment, assistance in directly obtaining new employment and training shall  
31 be available under conditions prescribed by the Commission. Vocational  
32 assistance may consist of, *but is not limited to, the following*:

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

1           (ii) a determination of whether suitable work is available from  
2 the employer through on-the-job training; or

3           (iii) a formal program of vocational re-training. The Commission  
4 may establish or approve other conditions on the providing of vocational  
5 assistance and services, including those relating to the worker's availability  
6 for assistance, participation in previous assistance programs connected with  
7 the same claim and the nature and extent of assistance that may provided.  
8 Such conditions shall give preference to direct employment assistance over  
9 training or re-training. A determination of return-to-work potential with a  
10 worker's present employer shall include a review of whether: (1) there may be  
11 a position available with the present employer which meets the test of  
12 suitable employment as set forth above, or (2) whether there may be  
13 reasonable accommodation by the employer that would make return-to-work  
14 feasible for the worker and which would not result in unreasonable financial  
15 hardship on the employer. Such reasonable accommodation may include, but is  
16 not necessarily limited to, modifications of the work site, job restructuring  
17 and identification of lighter duty work. An employer shall not be obligated,  
18 however, to create a job where one did not previously exist merely to  
19 accommodate a worker with permanent limitations. Provided, however, that any  
20 employer who, without good cause, shall refuse to either return a worker who  
21 *is injured in the course of his employment to work or to perform the*  
22 *reasonable accommodations* described above, shall, upon Order of the  
23 Commission and a determination that there has not been good cause for the  
24 refusal, be liable to the injured worker for a sum equal to the difference  
25 between the indemnity benefits actually received and the average weekly  
26 spendable earnings lost during the period of such refusal, the employer in no  
27 event to be liable for such difference for a period greater than one year.

28           (j) Vocational assistance as provided for by this section may be  
29 offered by insurers or by employers through properly authorized personnel, and  
30 that assistance may be offered either separately from the managed care  
31 providers or health care services or they may be offered in conjunction  
32 therewith as part of a coordinated continuum of service designed to again  
33 place the injured worker back into the workplace environment. Whether done as  
34 a separate and distinct program or by contract or in association with the  
35 providers of managed care health services, all vocational assistance

1 services must be performed by vocational counselors, and other persons  
2 certified or authorized by the Commission as capable of delivering such  
3 services.

4 (k) A carrier or self-insured employer may utilize the service of  
5 either the Division of Rehabilitation Services of the Arkansas Department of  
6 Human Services, or any other person certified by the Commission as capable of  
7 rendering the services required.

8 (l) The Commission shall adopt rules providing:

9 (1) Standards for methods of certifying vocational  
10 counselors and nurse case managers certifying such providers who are  
11 qualified by education, training, experience and plan of operation to provide  
12 vocational and medical case management assistance to injured workers.

13 (2) Conditions and procedures under which the certification of an  
14 individual or the authorization of a vocational or medical case management  
15 provider to provide vocational assistance services may be suspended or revoked  
16 for failure to maintain compliance with the certification or authorization  
17 standards;

18 (3) Standards for the nature and extent of service a worker may  
19 receive, for plans for return to work and for determining when the worker has  
20 returned to work; and

21 (4) Procedures, schedules and conditions relating to the payment for  
22 services performed by a vocational counselor or other providers, which shall  
23 be based on payment for services reasonably required and performed on an  
24 hourly basis with due regard to the complexity thereof and time required for  
25 delivery thereof.

26 (m) Carriers and self-insured employers shall maintain records and make  
27 reports to the Commission of vocational assistance actions at such times and  
28 in such manner as the Commission may prescribe. Such requirements shall be  
29 for the purpose of assisting the Commission in monitoring compliance with this  
30 section to insure that workers receive timely and appropriate and vocational  
31 assistance. The Commission shall compile a list of the organizations or  
32 agencies authorized to provide vocational assistance. A current list shall be  
33 distributed by the Commission to all carriers and self-insured employers.

34 (n) When a worker is eligible to receive vocational assistance, the  
35 worker and the carrier or self-insured employer shall attempt to agree on the

1 choice of a vocational assistance provider. If the worker agrees, the carrier  
2 or self-insured employer may utilize its own staff to provide vocational  
3 assistance if it is certified as hereinabove provided. If they are unable to  
4 agree on vocational assistance provider, the carrier or self-insured employer  
5 shall notify the Commission and the Commission shall select a provider, *giving*  
6 *preference to Arkansas Rehabilitation Services, which shall be paid by the*  
7 *respondent*. Any change in the choice of vocational assistance provider is  
8 subject to the approval of the Commission. The worker shall have a duty to  
9 diligently attend and actively participate in all training for which he has  
10 *petitioned for and* been approved. Any employee or worker who fails to  
11 diligently attend and actively participate in the training or who refuses to  
12 enter such a program after having been determined eligible therefor, shall not  
13 be entitled to any *rehabilitation* compensation during the continuance of the  
14 failure or refusal, respectively.

15 (o) Notwithstanding A.C.A. & 11-9-501 and 11-9-502, a workers who is  
16 drawing permanent partial indemnity benefits or temporary total indemnity  
17 benefits, and so has been determined as provided hereinabove set forth as  
18 eligible for vocational assistance, must make every reasonable effort to  
19 initiate and complete his vocational training as soon as reasonably possible.  
20 A worker actively engaged in such training shall be paid reasonable expenses  
21 of travel and *bi-weekly support* maintenance and other necessary costs of the  
22 vocational assistance program if found by the Commission to be reasonable in  
23 relation to the particular worker and his circumstances. The employer's  
24 responsibility for these additional expenses shall not exceed fifty-two (52)  
25 weeks, regardless of the length of the program the worker may desire to  
26 pursue; provided, however, that the vocational training program may be  
27 extended to a maximum of eighty-six (86) weeks, but only upon Order of the  
28 Commission upon a clear and convincing showing of good cause therefore. *In*  
29 *addition to all costs of the vocational assistance program, during the*  
30 continuance of the vocational training program, and so long as the worker is  
31 complying with his requirements with respect thereto as set forth above *in*  
32 *addition to maintenance*, he shall continue to receive such permanent partial  
33 indemnity benefits as to which he is entitled under the Act. If such payments  
34 would terminate prior to the end of the vocational training program, the  
35 Commission may *issue an expedited, nonappealable order* for such periodic



1 payments to continue through the end of the vocational assistance program as  
2 hereinabove set forth, with the condition that the worker diligently attend  
3 and actively participate in all such training for which he has been approved.  
4 Any payments of permanent partial indemnity so extended by extension of the  
5 vocational training program shall be credited in favor of the employer in  
6 conjunction with any final determination of wage loss disability.

7 (p) As used in this section, *\_vocational assistance provider\_* means a  
8 public or private organization or agency which provides vocational assistance  
9 to injured workers.

10 (q) (1) Determination of eligibility for vocational assistance does not  
11 entitle all workers to the same type or extent of assistance.

12 (2) Training shall not be provided to an eligible worker solely  
13 because the worker cannot obtain employment, otherwise suitable, that will  
14 produce a wage significantly closer to that prescribed in subsection (4) of  
15 this section.

16 (r) A physical or *psychiatric* capacities evaluation shall be performed  
17 in conjunction with vocational assistance or determination of eligibility for  
18 such assistance at the request of the carrier or self-insured employer or  
19 worker if agreed to *by all parties or provided by Order of the Commission*.  
20 *Such requests shall be made to the attending physician or to other person duly*  
21 *certified by the Commission as qualified to perform such evaluations. The*  
22 *attending physician or other designated evaluator, within 20 days of the*  
23 *request, shall perform a physical capacities evaluation or refer the worker*  
24 *for such evaluation or advise the carrier or self-insured employer and the*  
25 *worker in writing that he injured worker is incapable of participating in a*  
26 *physical capacities evaluation.*

27 (s) This section shall not be construed as creating an exception to the  
28 common law doctrine of employment at will."

29

30 SECTION 12. Arkansas Code 11-9-506 is amended to read as follows:

31 "11-9-506. Limitations on compensation - Recipients of  
32 unemployment benefits.

33 Any other provision of this chapter to the contrary notwithstanding;

34 (a) No compensation in any amount for temporary total, temporary partial  
35 or permanent total disability shall be payable to an injured employee with

1 respect to any week for which the injured employee receives unemployment  
2 insurance benefits under the Arkansas Employment Security Act, 11-10-101 et  
3 seq. or the unemployment insurance law of any other state, without there being  
4 a corresponding credit to the employer, self-insured, or carrier for said  
5 benefits disbursed, so as to adequately ensure no double recovery upon the  
6 part of the injured worker."

7

8 SECTION 13. Arkansas Code 11-9-508 is amended to read as follows:

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

10 (a) The employer shall promptly provide for an injured employee such  
11 *medical, optometric, chiropractic, podiatric, surgical, hospital, psychiatric,*  
12 *and nursing service, and medicine, glasses, contact lenses, hearing aids,*  
13 *crutches, artificial limbs, ambulatory and transportative devices, and other*  
14 *apparatus as may be reasonably necessary for the treatment of the injury*  
15 *received by the employee.*

16 (b) If the employer fails to provide the medical services set out above  
17 in subsection (a) of this section within a reasonable time after knowledge of  
18 the injury, the Commission may direct that the injured employee obtain the  
19 medical service at the expense of the employer, and any emergency or *interim*  
20 treatment afforded the injured employee shall be at the expense of the  
21 employer.

22 (c) A medical service provider or health care provider shall neither  
23 bill an employer or injured worker, nor collect for any amount for health care  
24 services or medical services provided for the treatment of a covered injury,  
25 illness or occupational disease, when that amount exceeds the amount  
26 determined to be reasonable compensation for the medical or health care  
27 service provided. The determination shall be subject to challenge and final  
28 determination by the Commission.

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

34 (e) For the purpose of establishing and implementing a system of managed  
35 health care, the Commission is authorized to:

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

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

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

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

12           (5) Give the employer the right, and all accepted compensable  
13 claims, to choose the initial treating physician with the injured employee  
14 having the right to make a one-time only change of physician by filing written  
15 notice with the commissioner and/or respondent. Provided however, that any  
16 change of physician or chiropractic be to one associated with a managed care  
17 entity certified by the Commission and/or is the regular treating physician or  
18 chiropractor of the employee or his family; but only if the primary care  
19 physician agrees to refer the employee to a certified managed care entity for  
20 any specialized treatment, including physical therapy and only if such primary  
21 care physician agrees to comply with all the rules, terms and conditions  
22 regarding services performed by the managed care entity initially chosen by  
23 the employer. However, if the claimant desires to change treatment to a  
24 chiropractic physician, the claimant may make such change by giving advance  
25 written notification to the employer, carrier, or Commission.

26           (6) Payment of medical costs and compensation under this section,  
27 in amounts not to exceed twenty-five hundred dollars (\$2,500) per claim, for  
28 medical services for non-disabling claims may be made by the subject employer  
29 if the employer so chooses. The making of such payments does not constitute a  
30 waiver or transfer of the insurer's duty to determine entitlement to benefits.  
31 If the employer chooses to make such payment, the employer shall report the  
32 injury to the insurer in the same manner that other injuries are reported.  
33 However, an insurer shall not modify an employer's experience rating for any  
34 medical expenses paid by the employer pursuant to this subsection.

35

1 SECTION 14. Arkansas Code 11-9-516 is amended to read as follows:

2 "11-9-516. Medical services and supplies - Information furnished by  
3 provider.

4 (a) Every hospital or other person furnishing the injured  
5 employee with medical services shall permit its records to be copied by and  
6 shall furnish full written information to the Commission, the employer, the  
7 carrier and the employee, the employee's representative or the employee's  
8 dependents. The reasonable cost of copies so provided shall be paid by the  
9 respondent to the health care or medical service provider furnishing them.  
10

11 SECTION 15. Arkansas Code 11-9-529 is hereby amended to read as  
12 follows:

13 "§11-9-529. Employer reports.

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

- 17 (1) The name, address, and business of the employer;
- 18 (2) The name, address, and occupation of the employee;
- 19 (3) The cause and nature of the injury or death;
- 20 (4) The year, month, day, and hour when, and the particular  
21 locality where, the injury or death occurred; and
- 22 (5) Such other information as the commission may require.

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

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

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

32 (e) Any employer who fails or refuses to send any report required of him  
33 by this subsection shall be subject to a civil penalty not exceeding five  
34 hundred dollars (\$500) for each failure or refusal. If an employer or carrier  
35 fails to pay any civil penalty assessed there against after an order issued

1 pursuant to this section has become final by operation of law or upon appeal,  
2 that order shall become enforceable as a compensation order as set forth in  
3 A.C.A. 11-9-409.

4       (f) Any section or subsection of this act notwithstanding, the injured  
5 employee shall have direct access to any optometrist medical service provider  
6 who agrees to provide services under the rules, terms and condition regarding  
7 services performed by the managed care entity initially chosen by the employer  
8 for the treatment/management of eye injuries or conditions. Such optometric  
9 medical service provider shall be considered a certified provider by the  
10 Commission."

11

12       SECTION 16. Arkansas Code 11-9-702(a) is amended to read as follows:

13       "(a) Time for Filing. A claim for compensation on account of an injury  
14 shall be barred unless filed with the commission within thirty (30) months  
15 from the date the claimant knew or should have known of the injury or disease,  
16 or of the actual injury date, whichever is greater. If, during the thirty  
17 (30) month period following the filing of the claim, the claimant receives no  
18 weekly benefit compensation and receives no medical treatment resulting from  
19 the alleged injury, the claim shall be barred thereafter."

20

21       SECTION 17. Arkansas Code 11-9-704(c) (3) is amended to read as follows:

22       "(3) Administrative law judges, the commission, and any reviewing courts  
23 shall construe the provisions of this chapter and the evidence liberally in  
24 accordance with the chapter's remedial purposes.

25

26       SECTION 18. Arkansas Code 11-9-715(a) (1) is amended to read as follows:

27       "(a) (1) Fees for legal services rendered to claimant or respondent shall not  
28 be valid unless approved by the commission. Any attorney's fees awarded to  
29 respondent's attorney by the commission shall be reasonable and upon petition  
30 showing time and cost expended in defending the claim."

31

32       SECTION 19. Arkansas Code 11-9-527(a) is amended to read as follows:

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

1

2       SECTION 20. Arkansas Code 11-9-802(d) is amended to read as follows:

3       "(d) Any and all compensation for temporary or permanent disability or  
4 payment to providers for medical services and supplies which are determined to  
5 be owing shall be paid by the respondent in a timely, expeditious manner. If  
6 by clear and convincing evidence it be demonstrated that a respondent has  
7 willfully and intentionally delayed the transmission to the injured worker or  
8 any such payments for a purpose inconsistent with the ameliorative and  
9 beneficial purposes of the Workers Compensation Act, or in any way to injury,  
10 intimidate or coerce the injured employee in the exercise of his rights, the  
11 carrier or self-insured employer shall be liable for penalty in a sum equal to  
12 two hundred percent (200%) of all payments so purposefully delayed, such sum  
13 to be payable in addition to the payments otherwise dictated by this act. In  
14 the event an injured worker prevails and carries his or her burden of proof  
15 as set forth hereinabove, he shall also be entitled to payments from the  
16 carrier or self-insured employer of all of his reasonable costs in pursuit of  
17 same, including reasonable attorney fees."

18

19       SECTION 21. Arkansas Code 11-9-805(b) is amended to read as follows:

20       "(b) If the commission decides it is for the best interests of the  
21 claimant that a final award be made, it may order and award that shall be  
22 final as to the rights of all parties to the petition. Thereafter the  
23 commission shall not have jurisdiction over any claim for the same injury or  
24 any results arising from it, except to enforce payments pursuant to the final  
25 award and to assess penalties, interest and reasonable attorneys' fees."

26

27       SECTION 22. Non-meritorious failure to pay benefits.

28       (a) In the event that any respondent should refuse or fail to pay any  
29 benefit or expense which has been the subject of prior final adjudication or  
30 approved joint petition, the respondent shall be required to pay interest, a  
31 twelve percent (12%) penalty and a reasonable attorney's fee thereon. In  
32 addition, in the event the commission or an administrative law judge finds the  
33 failure to pay is deliberate, and additional penalty of up to twenty-five  
34 percent (25%) may be awarded.

35       (b) The commission shall adopt a procedure, including telephone

1 conferences, to expedite the payment of medical benefits where the  
2 compensability of the injury is not controverted. Any medical bill not paid  
3 within forty-five (45) days after receipt by respondent shall be deemed  
4 controverted. If an Administrative Law Judge finds the controverted medical  
5 expenses to be compensable, the respondent shall be required to pay interest,  
6 a twelve percent (12%) penalty and a reasonable attorney's fee thereon."

7

8           SECTION 23. Request for review not to stay compensation:  
9 procedure to deny claim for medical services.

10           (1) (a) Filing by an employer or the insurer of a request for hearing on  
11 a reconsideration order or a request for board review or court appeal stays  
12 payment of the compensation appealed, except for:

13                           (A) Temporary disability benefits that accrue from the date  
14 of the order appealed, or until the order appealed from is itself reversed,  
15 whichever event first occurs: and

16                           (B) Permanent total disability benefits that accrue from  
17 the date of the order appealed from until the order appealed from is reversed.

18           (b) If ultimately found payable under a final order, benefits  
19 withheld under this subsection shall accrue interest at the maximum rate  
20 authorized by law from the date of the order appealed from through the date of  
21 payment. The board shall expedite review of appeals in which payment of  
22 compensation has been stayed under this section.

23           (2) If the board or court subsequently orders that compensation to the  
24 claimant should not have been allowed or should have been awarded in a lesser  
25 amount than awarded, the claimant shall not be obligated to repay any such  
26 compensation which was paid pending the review or appeal.

27           (3) If an insurer or self-insured employer denies the compensability of  
28 all or any portion of a claim submitted for medical services, the insurer or  
29 self-insured employer shall send notice of the denial to each provider of such  
30 medical services and to any provider of health insurance for the injured  
31 worked. After receiving notice of the denial, a medical service provider may  
32 submit medical reports and bills for the disputed medical services to the  
33 provider of health insurance for the injured worked. The health insurance  
34 provider shall pay all such bills in accordance with the limits, terms and  
35 conditions of the policy. If the injured worker has no health insurance, such

1 bills may be submitted to the injured worker. A provider of disputed medical  
2 services shall make no further effort to collect disputed medical service  
3 bills from the injured worker until the issue of compensability of the medical  
4 services has been finally determined. When the compensability issue has been  
5 finally determined or other disposition of the claim has been made, the  
6 insurer or self-insured employer shall notify each affected service provider  
7 of the results of the disposition. If the services are determined to be  
8 compensable, the insurer or self-insured employer shall reimburse each health  
9 insurance provider for the amount of claims paid by the health insurance  
10 provider pursuant to this section. Such reimbursement shall be in addition to  
11 compensation or medical benefits the worker receives. Medical service  
12 reimbursement shall be paid directly to the health insurance provider.

13

14 SECTION 24. Notwithstanding any other provision of this act to the  
15 contrary, the Arkansas Workers' Compensation Commission or its Executive  
16 Director is directed to certify all employers petitioning to become self-  
17 insurers in an amount up to one hundred thousand dollars (\$100,000), if:

18 (1) the employer furnishes satisfactory proof of financial ability to  
19 pay compensation claims, or posts a surety bond issued by a corporation  
20 authorized to do business in the state of Arkansas in the amount of self-  
21 insurance petitioned for; and

22 (2) the employer furnishes proof of a policy of excess insurance  
23 coverage in an amount not less than one million dollars (\$1,000,000) issued by  
24 a corporation authorized to do business in the state of Arkansas; and

25 (3) the employer agrees to submit to review of continuing fulfillment  
26 of requirements (1) and (2) on a semi-annual basis.

27

28 SECTION 25. All provisions of this act of a general and permanent nature  
29 are amendatory to the Arkansas Codes of 1987

30 Annotated and the Arkansas Code Revision Commission shall incorporate the same  
31 in the code.

32

33 SECTION 26. If any provisions of this act or the application thereof to  
34 any person or circumstance is held invalid, such invalidity shall not affect  
35 other provisions or applications of the act which can be given effect without



1 the invalid provision or application, an to this end the provisions of this  
2 act are declared to be serviceable.

3

4 SECTION 27. All laws and parts of laws in conflict with this act are  
5 hereby repealed.

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*/s/ Senator Dowd*

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