

1 **State of Arkansas**
2 **78th General Assembly**
3 **Regular Session, 1991**
4 **By: Representative Lipton**

A BILL ACT 756 OF 1991
HOUSE BILL 2017

For An Act To Be Entitled

8 "AN ACT TO PROVIDE FOR A WORKERS' COMPENSATION *PRIVATE*
9 *SECTOR* SELF-INSURER GUARANTY FUND; AND FOR OTHER
10 PURPOSES."

11

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

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14 SECTION 1. The Arkansas Worker's Compensation Commission is hereby
15 authorized to recognize an entity formed under the Arkansas Nonprofit
16 Corporation Act to function as the guaranty fund for Arkansas workers'
17 compensation self-insurers *in the private sector*. The corporation desiring to
18 act as the guaranty fund shall determine periodically the amount of money each
19 Arkansas workers' compensation self-insurer should contribute to the fund in
20 order to provide an adequate pool of money to pay workers' compensation
21 benefits owed by an Arkansas self-insurer when such self-insurer fails to meet
22 its workers' compensation benefits obligations. The Workers' Compensation
23 Commission shall assess all workers' compensation self-insurers in an amount
24 determined by the corporation and the Commission shall transmit the monies
25 collected to the corporation to be used solely to make workers' compensation
26 benefit payments from the fund and to defray the expenses of the fund.

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28 SECTION 2. Any person or entity whose workers' compensation self-
29 insurer status is terminated shall thereafter be subject to no further
30 assessments by the Commission, but shall remain liable for all assessments due
31 prior to date of termination.

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33 SECTION 3. At any time the workers' compensation self-insurer guaranty
34 fund becomes inadequate to make payments to claimants, the balance of the fund
35 shall be prorated equally among the claimants and the Arkansas workers'
36 compensation self-insurers shall be assessed an amount necessary to pay the

1 outstanding claims and expenses and replenish the fund.

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3 SECTION 4. Monies collected by the Arkansas Workers' Compensation
4 Commission and dispersed to the corporation shall be vested in the corporation
5 and shall not be deemed State property and shall not be subject to
6 appropriation by the General Assembly. The corporation shall annually submit
7 to an audit by an independent certified public accountant and a copy of the
8 audit report shall be transmitted to the Arkansas Workers' Compensation
9 Commission. The board of directors of the corporation shall direct the
10 investment of monies in the workers' compensation self-insurers guaranty fund
11 and all returns on the investments shall be retained in the fund. The monies
12 in the fund shall be used solely to compensate persons entitled to receive
13 workers' compensation benefits from an Arkansas self-insurer which is unable
14 to meet its workers' compensation benefits obligations and to defray the
15 expenses of the fund. The corporation shall have full rights of subrogation
16 against any source of payment or reimbursement for payments by the corporation
17 on behalf of an Arkansas workers' compensation self-insurer. The corporation
18 shall have a right of recovery through the maintenance of an action against
19 any third party , *other than a co-employee*, who is in any way responsible or
20 liable for injury or death to a covered worker. The corporation is also
21 authorized to take all necessary action, including bringing an action at law
22 or in equity to seek any available relief as against any workers' compensation
23 self-insurer, whether the self-insurer has paid all assessments levied by the
24 Workers' Compensation Commission on behalf of the corporation. If the
25 corporation is required to bring an action at law or in equity to enforce any
26 obligations, rights or duties as regards a workers' compensation self-insurer,
27 the court may award reasonable attorneys' fees and costs to the corporation.

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29 SECTION 5. The Workers' Compensation Commission shall report to the
30 board of directors of the corporation when the Commission has reasonable cause
31 to believe that the payment of potential claims by an Arkansas workers'
32 compensation self-insurer is or may be jeopardized by the existing or
33 potential financial condition of the self-insurer. The board of directors of
34 the corporation shall, based on such information as is reasonably available,
35 report to the Commission upon all matters germane to the solvency,
36 liquidation, rehabilitation or conservation of any workers' compensation self-

1 insurer and such reports shall not be deemed public documents under the
2 Arkansas Freedom of Information Act or any other law.

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4 SECTION 6. There shall be no liability on the part of and no cause of
5 action of any nature shall lie, whether at law or in equity, against any agent
6 or employee of the corporation, its board of directors, any Arkansas workers'
7 compensation self-insurer, the Workers' Compensation Commission or any of its
8 representatives on account of any action or inaction by any of them in the
9 administration of the workers' compensation self-insurer guaranty fund or the
10 performance of their duties in connection therewith.

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12 SECTION 7. All private sector participants in the Arkansas workers'
13 compensation self-insurers program shall be members of the corporation acting
14 as the guaranty fund and the Commission may revoke any such self-insurer's
15 authority to act as a workers' compensation self-insurer if the self-insurer
16 fails to maintain membership in the corporation or fails to pay the
17 assessments levied by the Commission under this act.

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19 SECTION 8. *Public sector self-insurers are specifically exempted from*
20 *the provisions of this Act.*

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22 SECTION 9. The Workers' Compensation Commission shall promulgate
23 regulations to implement this Act.

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25 SECTION 10. All provisions of this Act of a general and permanent
26 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
27 Code Revision Commission shall incorporate the same in the Code.

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29 SECTION 11. If any provision of this Act or the application thereof to
30 any person or circumstance is held invalid, such invalidity shall not affect
31 other provisions or applications of the Act which can be given effect without
32 the invalid provision or application, and to this end the provisions of this
33 Act are declared to be severable.

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35 SECTION 12. All laws and parts of laws in conflict with this Act are

1 hereby repealed.

/s/ John "M" Lipton

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APPROVED: 3-26-91

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