

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

A Bill

ACT 1155 OF 1993
SENATE BILL 661

For An Act To Be Entitled

8 "AN ACT TO AMEND ARKANSAS CODE 23-67-204 AND 23-67-206 OF
9 THE ARKANSAS WORKERS_ COMPENSATION INSURANCE PLAN TO
10 PROMOTE COMPETITION AND IMPROVE SERVICING CARRIER
11 PERFORMANCE; AND FOR OTHER PURPOSES."

Subtitle

14 "TO AMEND THE ARKANSAS WORKERS_ COMPENSATION INSURANCE
15 PLAN TO PROMOTE COMPETITION AND IMPROVE SERVICING CARRIER
16 PERFORMANCE."

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

20 *SECTION 1. Arkansas Code 23-67-204 is amended to read as follows:*

21 *"23-67-204. Plan for coverage.*

22 *(a) The Arkansas Workers' Compensation Insurance Plan shall give*
23 *consideration to:*

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

25 *(2) Optional methods of improving the market affected;*

26 *(3) The need for reasonable underwriting standards;*

27 *(4) The need for adequate supervisory and servicing procedures*
28 *to ensure proper operation of the Plan;*

29 *(5) The need to establish procedures that will have minimum*
30 *interference with the voluntary market;*

31 *(6) Distributing the obligations imposed by the Plan and any*
32 *profits or losses experienced by the Plan equitably and efficiently among the*
33 *participating insurers; and*

34 *(7) Establishing procedures for applicants and participants to*
35 *have their grievances reviewed and resolved..*

36 *(b) The Plan shall provide for the issuance of a policy covering the*

1 entire liability of the employer as to the business for which workers'
2 compensation insurance has been rejected. Nothing in this paragraph (b) shall
3 modify or repeal the provisions of Arkansas Code 23-92-315(3).

4 (c) The rates and supplementary rate information of the Arkansas
5 Workers' Compensation Insurance Plan shall meet the standards specified in
6 §23-67-108.

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

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

13 (2) Any person or entity to whom the establishment,
14 implementation, or operation of the Plan is delegated pursuant to this
15 subsection shall file with and obtain the approval of the commissioner as to
16 all policy forms, rates, or supplementary rate information necessary to
17 effectuate the Plan.

18 (3) In delegating all or part of the commissioner's
19 responsibility, the commissioner shall not approve any Plan or filing that
20 abrogates or restricts his authority to select the Plan administrator or
21 servicing carriers. The commissioner shall competitively select the
22 organization or organizations to whom the responsibility of Plan administrator
23 shall be delegated. If the administration of the Plan is delegated, the Plan
24 administrator or administrators shall have an office in Arkansas adequately
25 staffed, outfitted and maintained to provide the Plan services delegated. The
26 commissioner shall specify duties and functions of Plan administrators and may
27 structure and delegate administrative functions separately such as, but not
28 limited to, rates, forms and statistics for the best operation of the Plan.

29 (f) (1) In order to promote competition and improve servicing carrier
30 performance, the commissioner shall competitively select those servicing
31 carriers who shall serve the Arkansas Workers Compensation Insurance Plan.
32 Any insurer licensed to transact workers compensation and employers liability
33 insurance in Arkansas may apply for selection as a servicing carrier, but if
34 an adequate number of qualified insurers do not apply, the commissioner may
35 appoint any such insurer, as needed, to serve as a servicing carrier.

1 (2) All servicing carriers shall be subject to the following
2 minimum standards.

3 (A) Each insurer shall continually employ such number of
4 qualified administrative personnel and dedicate such equipment and facilities
5 to the administration of the Arkansas Workers Compensation Insurance Plan as
6 the commissioner, in his reasonable discretion, deems adequate to service the
7 needs of the Plan;

8 (B) Each such insurer shall comply with the following
9 specific service or performance standards and such further standards as the
10 commissioner may by rule and regulation provide:

11 (i) provide a level of service comparable to that
12 provided to employer-insureds in its voluntary workers compensation line of
13 business, and assure same by putting into effect internal administrative
14 procedures which shall assure that such is the case;

15 (ii) maintain with the commissioner a list of
16 responsible management personnel of the insurer qualified to make
17 administrative decisions on the insurer's behalf concerning policies issued
18 within the Plan;

19 (iii) keep the commissioner continually advised of the
20 address and telephone number of the insurer's office servicing the Plan on its
21 behalf;

22 (iv) maintain a toll-free telephone number or numbers
23 adequate to service the Plan and keep the commissioner, employers, and agents
24 continually apprised of same;

25 (v) maintain its billing and rating procedure in
26 timely compliance with Orders of the commissioner; and, in particular, no such
27 insurer shall ever purport to effect a retroactive rate adjustment based upon
28 a succeeding rate filing unless such insurer has specifically included within
29 its policies a specific notice of pending rate change; and further, no such
30 insurer shall fail to physically implement any rate change later than sixty
31 (60) days of the date the Order effecting the change is entered; and

32 (vi) such other service or performance standards
33 including, but not limited to, matters relating to loss experience, safety and
34 loss control success, and profitability as the commissioner shall by rule and
35 regulation prescribe.

1 (g) The commissioner is hereby vested with the power and the
2 reasonable discretion, after notice and hearing, to impose upon any servicing
3 carrier not meeting the standards herein prescribed or set forth by rule and
4 regulation an administrative fine or penalty in the sum of not more than One
5 Thousand Dollars (\$1,000.00) for each such violation of standard.

6 (h) The commissioner shall in considering performance of servicing
7 carriers require the Plan administrator to:

8 (1) File with the Insurance Department quarterly results of the
9 Plan, including, but not limited to, premiums written and earned, losses paid,
10 incurred losses, administration and servicing carrier allowances; and

11 (2) File with the Insurance Department annually the performance
12 review and Plan results of each Arkansas Plan servicing carrier.

13 (i) Servicing carriers may join cooperatively with other licensed
14 insurers or general business corporations for the purpose of satisfying their
15 duties as servicing carriers, including but not limited to claim review and
16 payment, loss control and safety functions. The commissioner shall actively
17 encourage additional financially sound licensed carriers or combinations of
18 licensed carriers to join together as joint venturers with shared
19 responsibilities for servicing functions and, also, to utilize the services of
20 such claim, safety, and other service organizations as reasonably necessary to
21 provide the best servicing carrier service economically possible..

22 (j) The commissioner shall establish within the Arkansas Workers
23 Compensation Insurance Plan an Alternate Preferred Plan for employers who have
24 carried workers compensation insurance continually for at least four policy
25 years and who have had better than average loss experience and meet such
26 additional reasonable standards as the commissioner shall by rule and
27 regulation prescribe.

28 (k) The commissioner shall by rule and regulation establish a
29 performance plan related to the aforementioned service or performance
30 standards and others to be promulgated with incentives and penalties to
31 improve servicing carrier performance. The performance plan shall provide for
32 up to thirty-three percent (33%) of the servicing carrier's remuneration to be
33 based on performance. The servicing carrier performance plan shall provide an
34 annual basis for penalties on carriers performing below standard to the extent
35 of their under-performance under the criteria as hereinafter established by

1 rule and regulation up to to thirty-three percent (33%) of their remuneration.
2 These penalties shall be distributed as incentives to carriers performing at
3 or above standard up to their thirty-three percent (33%) of their
4 remuneration. The commissioner shall conduct a performance review on the Plan
5 administration and each servicing carrier promptly after the end of each
6 calender year. This performance review should be conducted independently of
7 any performed by an organization owned or controlled by insurance carriers. A
8 report of this review and action taken to improve Plan performance shall be
9 made to the General Assembly no later than June 30 after the calendar year
10 reviewed. The first review and imposition of incentives and penalties shall
11 be for calendar year 1994 operation, but may be sooner if the commissioner
12 elects."

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14 SECTION 2. Arkansas Code 23-67-206 is amended to read as follows:

15 "23-67-206. Employers entitled to insurance.

16 Any employer required to secure the payment of compensation under the
17 provisions of § 11-9-404(a)(1) or any similar federal law shall be entitled to
18 insurance under the provisions of this subchapter, provided:

19 (1) The employer pays his premium based upon the premium payment rules
20 approved by the commissioner;

21 (2) The employer has complied with all effective laws, orders, rules,
22 or regulations made by public authorities relating to the welfare, health, and
23 safety of employees;

24 (3) The employer is not in default of premium payment(s) owed for
25 workers' compensation insurance; *provided however, that no employer shall be*
26 *deemed to be in default of premium payment if all of the sum by which he is*
27 *alleged to be in default is properly attributable to a good faith, bona fide*
28 *dispute between the insurer and the employer over the accuracy or legality of*
29 *an audit of payroll performed by or at the request of the insurer, and which*
30 *said dispute is in formal process of resolution as provided at Arkansas Code*
31 *§23-67-119(d); all such disputes shall be resolved in the manner hereinabove*
32 *set forth at Arkansas Code 23-67-119(d); and*

33 (4) In order to promote competition and improve servicing carrier
34 performance, an employer applying for coverage or on renewal in the Arkansas
35 Workers_ Compensation Plan may strike six (6) servicing carriers, not to

1 exceed a maximum of one-half (1/2) of the eligible servicing carriers, from
2 the list of eligible servicing carriers to which the employer can be
3 assigned."

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6 Section 3. (A) The commissioner shall make a good faith effort to
7 comply with the intent of the provisions requiring competitive selection of
8 the Plan Administrator and servicing carriers by January 1, 1994. The
9 commissioner may suspend implementing this part of requirements until July 1,
10 1995 provided that:

11 (1) The commissioner has sought and compared other
12 administrative services available;

13 (2) The commissioner deems there to have been in the interim a
14 satisfactory improvement in Plan administrator and servicing carrier
15 performance; and

16 (3) The commissioner judges continuation of present Plan
17 administrator and servicing carriers subject to the modifications herein set
18 forth and to hereafter be promulgated by rule and regulation to be in the best
19 interests of Arkansas.

20 (B) The provision that Plan administrator have an office in Arkansas
21 providing services delegated shall be implemented by January 1, 1994.

22 (C) All other provisions of this act shall be effective September 1,
23 1993.

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25 SECTION 4. 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 5. 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 6. All laws and parts of laws in conflict with this act are

As Engrossed: 3/24/93

SB 661

1 hereby repealed.

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/s/ Senator Bradford

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APPROVED: 4/14/93

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