

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

A Bill

ACT 319 OF 1993
HOUSE BILL 1434

For An Act To Be Entitled

8 "AN ACT TO AMEND VARIOUS SECTIONS OF SUBCHAPTER 7 OF
9 CHAPTER 2 OF TITLE 21 OF THE ARKANSAS CODE ANNOTATED
10 RELATING TO THE SELF-INSURED FIDELITY BOND PROGRAM; AND
11 FOR OTHER PURPOSES."

Subtitle

14 **"TO AMEND VARIOUS SECTIONS OF ARKANSAS CODE §21-2-**
15 **701, ET SEQ. RELATING TO THE SELF-INSURED FIDELITY**
16 **BOND PROGRAM."**

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

20 **SECTION 1. Arkansas Code § 21-2-702 is hereby amended to read as follows:**

21 **"21-2-702. Definitions. As used in this subchapter, unless the context otherwise**
22 **requires:**

23 **(1) _State_ means the State of Arkansas;**

24 **(2) _County_ or _counties_ means the county or counties of the State of Arkansas;**

25 **(3) _Municipal_, _municipality_, or _municipalities_ refers to or means the**
26 **municipalities of the State of Arkansas;**

27 **(4) _School district_ or _school districts_ means the school districts of the State of**
28 **Arkansas;**

29 **(5) _State officers and employees_ means all elected and appointed salaried officials of**
30 **the state and their salaried state employees, the salaried officials and salaried employees of all**
31 **state boards and commissions, members of the General Assembly and nonsalaried appointed**
32 **members of the various state boards and commissions;**

33 **(6) _State public official_ or _state public employee_ means any elected or appointed**
34 **salaried officer of the State of Arkansas and the salaried governmental employees of that**
35 **elected or appointed officer, members of the General Assembly and the nonsalaried members**
36 **of the various state boards and commissions;**

1 **(7) _County public official_ or _county public employee_ means any elected officer of**
2 **the counties and the employees or deputies of any elected officer, members of the quorum court**
3 **and the members of the various county boards and commissions, excluding officials and**
4 **employees of county hospitals, county nursing homes, and conservation and improvement**
5 **districts;**

6 **(8) _Municipal public official_ or _municipal public employee_ means any elected**
7 **officer of the municipalities and the employees or deputies of any elected officer, specifically**
8 **including salaried municipal employees of municipally owned utilities, members of the city**
9 **council including the mayor and the members of the various municipal boards and**
10 **commissions, but excluding officials and employees of municipal hospitals, nursing homes, and**
11 **improvement districts;**

12 **(9) _School district public official_ or _school district public employee_ means all**
13 **school district salaried officials and salaried school district employees, whether elected or**
14 **appointed, and the members of local school boards of directors;**

15 **(10) _Commissioner_ means the Insurance Commissioner of the State of Arkansas;**

16 **(11) _Money_ means currency, coins and bank notes in current use and having a face**
17 **value, travelers checks, register checks and money orders held for sale to the general public;**

18 **(12) _Securities_ means negotiable and non-negotiable instruments or contracts**
19 **representing either money or other property and includes:**

20 **(A) Tokens, tickets, revenue and other stamps in current use whether**
21 **represented by actual stamps or unused value in a meter; and**

22 **(B) Evidences of debt, other than money, issued in connection with credit or**
23 **charge cards; and**

24 **(13) _Property other than money and securities_ means any tangible property, other**
25 **than money and securities, that has intrinsic value."**

26

27 **SECTION 2. Arkansas Code 21-2-704 is hereby amended to read as follows:**

28 **"21-2-704. Establishment - Scope of coverage.**

29 **(a) There is established a self-insured Fidelity Bond Program for state officials and**
30 **employees, county officials and employees, municipal officials and employees, and school**
31 **district officials and employees, as defined in 21-2-702, to be administered by the**
32 **Governmental Bonding Board.**

33 **(b) The fidelity bond coverage provided by the self-insured Fidelity Bond Program**
34 **shall cover actual losses sustained by the participating governmental entities as defined in**
35 **21-2-702 through any fraudulent or dishonest act or acts committed by any of the officials or**

1 **employees, acting alone or in collusion with others, during the bond period to an amount not**
2 **exceeding three hundred thousand dollars (\$300,000) per occurrence. Coverage for loss of**
3 **property other than money and securities shall be limited to the actual cash value of the**
4 **property on the day the loss was discovered.**

5 **(c) This coverage shall not include compensatory, punitive, or exemplary damages, and**
6 **no interest or penalty amounts shall accrue on bond claims made pursuant to this subchapter**
7 **including, but not limited to, investigative expenses, legal fees, or court costs.**

8 **(d) The fidelity bond coverage provided by the self-insured Fidelity Bond Program**
9 **shall not cover losses sustained by the participating governmental entities as a result of:**

10 **(1) Liability imposed upon or assumed by the participating governmental**
11 **entities to exonerate or indemnify an official or employee from or against liability incurred by**
12 **the official or employee in the performance of duties; or**

13 **(2) Damages for which the participating governmental entity is legally liable as**
14 **a result of:**

15 **(A) The deprivation or violation of the civil rights of any person by an**
16 **official or employee; or**

17 **(B) The tortious conduct of an official or employee, except conversion of**
18 **property of other parties held by the participating governmental entity in any capacity; or**

19 **(3) Loss of property other than money and securities unless the participating**
20 **governmental entity or the Division of Legislative Audit shall be able to designate the specific**
21 **official or employee causing such loss.**

22 **(e) Fidelity bond coverage shall not cover losses sustained by any party other than the**
23 **participating governmental entities.**

24 **(f) Except as provided in subdivision (d)(3) of this section, in case of a loss alleged to**
25 **have been caused to a participating governmental entity through any fraudulent or dishonest**
26 **act or acts by an official or employee covered under the fidelity bond coverage afforded under**
27 **the provisions of this subchapter, and the participating governmental entity or the Division of**
28 **Legislative Audit shall be unable to designate the specific official or employee causing the loss,**
29 **the participating governmental entity shall nevertheless have the benefit of fidelity bond**
30 **coverage."**

31

32 **SECTION 3. Arkansas Code § 21-2-708 is hereby amended by adding a new**
33 **subsection (d) to read as follows:**

34 **"(d) For purposes of obtaining restitution as provided in subsection (c) of this section,**
35 **the Fidelity Bond Program and the participating governmental entity shall be deemed victims.**

1 In any criminal prosecution against the official or employee causing the loss, where such
2 official or employee enters a plea of guilty or nolo contendere, or, where such official or
3 employee is found guilty following a trial, restitution shall be awarded to the participating
4 governmental entity for the entire amount of its unreimbursed losses and to the Fidelity Bond
5 Program for the entire amount of its payment to the participating governmental entity."
6

7 SECTION 4. Arkansas Code 21-2-709 is hereby amended to read as follows:

8 "21-2-709. Determination of coverage - Assignment of rights.

9 (a) Upon the receipt of the proof of loss from the Legislative Auditor, the board shall
10 determine whether the loss is covered under the Fidelity Bond Program. If the board
11 determines that the loss is covered under the Fidelity Bond Program, the Insurance
12 Commissioner shall authorize fidelity bond loss payments from the fund to the participating
13 governmental entity on a timely basis. All vouchers for bond claim payments shall include as
14 supporting documents a copy of the payment recommendation by the State Risk Manager and
15 a copy of the proof of loss from the Legislative Auditor. Any loss payment may be adjusted by
16 any applicable deductibles, restitution or coinsurance payments.

17 (b) Upon fidelity bond loss payment from the fund, the recipients of the loss payment
18 shall, to the extent of the payment, assign to the fund all rights and claims that they may have
19 against the official, officer, or employee involved. The fund shall be subrogated to all of the
20 rights of the recipients of the fidelity bond loss payment to the extent of the payment. If the
21 participating governmental entity shall sustain any loss which exceeds the amount of indemnity
22 provided by the Fidelity Bond Program, the governmental entity shall be entitled to all
23 recoveries (except from suretyship, insurance, reinsurance, security or indemnity taken by or
24 for the benefit of the Fidelity Bond Program) by whomever made, on account of such loss until
25 fully reimbursed, less the amount of the deductible and coinsurance; and any remainder shall
26 be applied to reimbursement of the Fidelity Bond Program. If a participating governmental
27 entity fails to pay over amounts due the Fidelity Bond Program under these provisions, the
28 Fidelity Bond Board may, at its discretion, deduct any amounts due from future bond loss
29 payments due the applicable participating governmental entity or from any Treasury Funds of
30 the applicable participating governmental entity.

31 (c) The Insurance Commissioner shall timely notify the Legislative Auditor if the
32 board determines that the loss is not covered under the Fidelity Bond Program."
33

34 SECTION 5. All provisions of this act of a general and permanent nature are
35 amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision

1 **Commission shall incorporate the same in the Code.**

2

3 **SECTION 6. If any provision of this act or the application thereof to any person or**
4 **circumstance is held invalid, such invalidity shall not affect other provisions or applications of**
5 **the act which can be given effect without the invalid provision or application, and to this end**
6 **the provisions of this act are declared to be severable.**

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8 **SECTION 7. All laws and parts of laws in conflict with this act are hereby repealed.**

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10 **APPROVED: 03/02/93**

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