

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 384 of the Regular Session

1 State of Arkansas

As Engrossed: S2/7/07 S2/15/07 H2/27/07 H3/5/07

2 86th General Assembly

A Bill

3 Regular Session, 2007

SENATE BILL 191

4

5 By: Senators Steele, Faris

6 By: Representatives E. Brown, Medley

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For An Act To Be Entitled

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AN ACT TO AUTHORIZE THE GOVERNOR TO CREATE THE DEPARTMENT OF HEALTH; TO AUTHORIZE THE GOVERNOR TO TRANSFER THE POWERS, DUTIES, APPROPRIATIONS, AND OPERATIONS OF THE DIVISION OF HEALTH OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO THE DEPARTMENT OF HEALTH; AND FOR OTHER PURPOSES.

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Subtitle

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TO AUTHORIZE THE GOVERNOR TO CREATE THE DEPARTMENT OF HEALTH AND TO TRANSFER THE POWERS, DUTIES, APPROPRIATIONS AND OPERATIONS OF THE *DIVISION* OF HEALTH OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO THE DEPARTMENT OF HEALTH.

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

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SECTION 1. Creation of the Department of Health.

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(a) There is created the Department of Health, that is to be established if the Governor orders the separation of the Division of Health of the Department of Health and Human Services from the Department of Health and Human Services.

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(b) If the Governor establishes the Department of Health under subsection (a) of this section, the Arkansas Code Revision Commission shall replace all references in the Arkansas Code to the:

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1 (1) "Division of Health of the Department of Health and Human
2 Services" or "Division of Health" with "Department of Health"; and

3 (2) "Department of Health and Human Services" with "Department
4 of Human Services".

5 (c) Sections 2 through 12 of this act become effective only if the
6 Governor establishes the Department of Health under subsection (a) of this
7 section.

8
9 SECTION 2. Transfer of the Division of Health of the Department of
10 Health and Human Services out of the Department of Health and Human Services.

11 (a) Effective sixty (60) days after the Governor establishes the
12 Department of Health under this act, and as provided in the orders of the
13 Governor, the following may be transferred to the Department of Health:

14 (1) Authority, powers, duties, and functions as established by
15 law for the Division of Health of the Department of Health and Human
16 Services, including purchasing, budgeting, fiscal, accounting, human
17 resources, payroll, legal, information systems, maintenance, program support,
18 administrative support, and other management functions;

19 (2) Records, personnel, property, unexpended balances of
20 appropriations, allocations, or other funds of the Division of Health of the
21 Department of Health and Human Services;

22 (3) Rulemaking, regulation, and licensing, promulgation of
23 rules, rates, regulations, and standards, and the rendering of findings,
24 orders, and adjudications as established by law for the Division of Health of
25 the Department of Health and Human Services, except as otherwise specified in
26 this act.

27 (b) Powers, duties, and functions, including without limitation,
28 rulemaking, regulation, and licensing, promulgation of rules, rates,
29 regulations, and standards, budgetary responsibilities, and the rendering of
30 findings, orders, and adjudications as established by law for the Breast
31 Cancer Control Program or other transferred entities within the Division of
32 Health of the Department of Health and Human Services shall be retained as
33 they existed on June 30, 2005.

34 (c) The Governor may appoint a Surgeon General in accordance with §
35 20-7-103.

36

1 SECTION 3. Transfer of the State Board of Health to the Department of
2 Health.

3 (a) Effective sixty (60) days after the Department of Health is
4 established, the State Board of Health shall be transferred to the Department
5 of Health.

6 (b) The State Board of Health shall receive administrative support
7 from the Department of Health and shall retain the same powers, authorities,
8 duties, and functions prescribed by law as it had before the transfer and
9 shall have all rule-making authority prescribed by law to the Division of
10 Health of the Department of Health and Human Services before the transfer,
11 except as provided for in this act, including, without limitation:

12 (1) Rule making, licensing, and registration;

13 (2) The promulgation of rules, rates, and standards;

14 (3) Examining, investigating, inspecting, and reviewing; and

15 (4) The rendering of findings, orders, and adjudications.

16
17 SECTION 4. Arkansas Code §§ 20-7-102 and 20-7-103 are amended to read
18 as follows:

19 20-7-102. Members – Appointment.

20 (a) The State Board of Health shall consist of ~~twenty-three (23)~~ the
21 following members, to be appointed by the Governor as follows:

22 (1)(A) Seven (7) members of the board shall be licensed medical
23 doctors of good professional standing, to be appointed by the Governor as
24 follows:

25 (i) One (1) member shall be appointed from each of
26 the four (4) congressional districts of this state as established by § 7-2-
27 101 et seq.; and

28 (ii) Three (3) members shall be appointed from the
29 state at large from a list of not fewer than three (3) names presented for
30 each position by the Arkansas Medical Society.

31 (B) Notwithstanding the provisions of subdivision
32 (a)(1)(A) of this section, at least one (1) of the positions allocated for
33 licensed medical doctors shall be an osteopathic physician appointed from a
34 list of not fewer than three (3) names presented to the Governor by the
35 Arkansas Osteopathic Medical Association from the state at large;

36 (2) One (1) member shall be a regularly licensed, registered,

1 and practicing dentist who has at least seven (7) years' experience in the
2 practice of his or her profession in this state. This member shall be
3 appointed from a list of not fewer than three (3) names presented by the
4 Arkansas State Dental Association;

5 (3) One (1) member shall be a registered professional engineer
6 who has at least seven (7) years' experience in the practice of his or her
7 profession in this state. This member shall be appointed from a list of not
8 fewer than three (3) names presented by the Arkansas Society of Professional
9 Engineers;

10 (4) One (1) member shall be a regularly licensed professional
11 nurse who has been a resident of the state for at least seven (7) years
12 preceding the appointment and who has at least a bachelor's degree and five
13 (5) years' nursing experience in the state. This member shall be appointed
14 from a list of not more than three (3) names presented by the Arkansas State
15 Nurses Association;

16 (5) One (1) member shall be a regularly licensed pharmacist who
17 has been actively engaged in the practice of pharmacy for at least seven (7)
18 years preceding his or her appointment. This member shall be appointed from a
19 list of not fewer than three (3) names presented by the Arkansas Pharmacists
20 Association;

21 (6) One (1) member shall be a regularly licensed veterinarian
22 who has been actively engaged in the practice of veterinary medicine for at
23 least seven (7) years preceding his or her appointment. This member shall be
24 appointed from a list of not fewer than three (3) names presented by the
25 Arkansas Veterinary Medical Association;

26 (7) One (1) member shall be a registered sanitarian who has at
27 least seven (7) years' experience in the practice of his or her profession
28 preceding his or her appointment. This member shall be appointed from a list
29 of not fewer than three (3) names presented by the Arkansas State Board of
30 Sanitarians;

31 (8) One (1) member shall be a hospital administrator who has at
32 least seven (7) years' experience in the practice of his or her profession in
33 Arkansas. This member shall be appointed from a list of not fewer than three
34 (3) names presented by the Arkansas Hospital Association;

35 (9) One (1) member shall be a regularly licensed, registered,
36 and practicing optometrist who has at least seven (7) years' experience in

1 the practice of his or her profession in this state. This member shall be
2 appointed from a list of not fewer than three (3) names presented by the
3 Arkansas Optometric Association;

4 (10) One (1) member shall be a regularly licensed and practicing
5 chiropractor. This member shall be appointed from a list of not fewer than
6 three (3) names submitted by the Arkansas Chiropractic Association or the
7 Arkansas Chiropractic Society;

8 (11) One (1) member shall be a restaurant operator who has owned
9 or operated a restaurant for a minimum of five (5) years. This member shall
10 be appointed by the Governor from a list of three (3) names submitted by the
11 Arkansas Hospitality Association;

12 (12) One (1) member shall be a consumer representative who has
13 an interest in public health. This member shall be appointed by the Governor
14 from the state at large;

15 (13) One (1) member shall be more than sixty (60) years old and
16 represent the elderly. This person shall not be actively engaged in or
17 retired from any occupation, profession, or industry to be regulated by the
18 board. The member shall be appointed by the Governor from the state at large
19 and be subject to confirmation by the Senate;

20 (14) One (1) member shall be a licensed doctor of podiatric
21 medicine of good professional standing who has at least seven (7) years'
22 experience in the practice of the profession in this state. The member shall
23 be appointed from a list of not fewer than three (3) names presented by the
24 Arkansas Podiatric Medical Association;

25 (15) One (1) member shall be a member of the Arkansas Public
26 Health Association. The member shall be appointed by the Governor from a list
27 of three (3) names submitted by the Arkansas Public Health Association;

28 (16) One (1) member shall be a licensed medical doctor of good
29 professional standing who shall be appointed from a rural county that
30 contains a medically underserved population in the state; and

31 ~~One (1) member shall be the Director of the Department of~~
32 ~~Health and Human Services or his or her designee~~ One (1) member shall be the
33 Director of the Department of Health or the Director of the Division of
34 Health of the Arkansas Department of Health and Human Services.

35 (b) Each of the members of the board so appointed shall take the oath
36 prescribed by the Arkansas Constitution for state officers and shall be

1 commissioned by the Governor in the same manner as other state officials.

2
3 20-7-103. Members – Officers.

4 (a) The members of the State Board of Health shall elect one (1) of
5 the members as president. However, the Director of the Department of Health
6 or the Director of the Division of Health of the Department of Health and
7 Human Services ~~or his or her designee on the board~~ shall not serve as the
8 President of the State Board of Health.

9 (b)(1) With approval of the board the Governor ~~shall~~ may appoint a
10 ~~Chief Health Officer~~ Surgeon General for the State of Arkansas who shall not
11 be a current sitting member of the board and who shall:

12 (A) Be a graduate of a legally constituted and reputable
13 medical college;

14 (B) Be of good standing; ~~and~~

15 (C) Have all the powers of the members of the board; ~~and~~

16 (D) Serve as a cabinet level advisor to the Governor.

17 (2) ~~The Chief Health Officer~~ Surgeon General ~~shall also be known~~
18 ~~as the Secretary of the State Board of Health and shall perform such duties~~
19 ~~as may be required of him or her by the board or by this subchapter~~ Governor
20 or the board, or both, including, but not limited to:

21 (A) ~~Serving as the public representative for the board~~
22 Reviewing, assessing, and developing health policy options, including
23 insurance coverage, health risk management, disease prevention, and health
24 promotion strategies across state agencies;

25 (B) ~~Serving as the board's representative on various other~~
26 ~~state and private boards and commissions as required by the board or in~~
27 ~~provisions of the Arkansas Code~~ Providing policy options for the Governor and
28 senior state agency officials;

29 (C) ~~Representing the board by providing health information~~
30 ~~and assisting the division in providing risk factor assessments in regard to~~
31 ~~improving quality of health issues at public events; and~~ Raising awareness of
32 healthcare and public health areas of priority for advancement of the state
33 population's health;

34 (D) ~~Assisting the board and the division in~~ Reviewing
35 legislative analyses and proposed legislation and creating position
36 statements for the Governor and senior state agency officials;

1 (E) Advising the Governor, senior state agency officials,
 2 and governing boards and commissions on policy issues and program
 3 accomplishments; and

4 (F) Providing medical review oversight and guidance to
 5 health and human services clinical programs upon request.

6 ~~(i) The creation of various health-oriented outreach~~
 7 ~~campaigns utilizing print, radio, and television public service~~
 8 ~~announcements, advertisements, posters, and other materials;~~

9 ~~(ii) Targeting population segments at risk for~~
 10 ~~various health issues;~~

11 ~~(iii) Providing reliable information on various~~
 12 ~~health issues to policy makers;~~

13 ~~(iv) Distributing information through county health~~
 14 ~~departments, schools, area agencies on aging, employer wellness programs,~~
 15 ~~physicians, hospitals and health maintenance organizations, women's groups,~~
 16 ~~nonprofit organizations, and community based organizations;~~

17 ~~(v) Raising, by any other strategy, public awareness~~
 18 ~~about health issues that are consistent with the provisions of this~~
 19 ~~subchapter;~~

20 ~~(vi) Identifying and obtaining educational materials~~
 21 ~~for the professional health care providers that translate the latest~~
 22 ~~scientific and medical information on various health issues into clinical~~
 23 ~~applications;~~

24 ~~(vii) Raising awareness among professional health~~
 25 ~~care providers as to the importance of prevention, early detection,~~
 26 ~~treatment, and rehabilitation practices, techniques, and reporting measures~~
 27 ~~related to various health issues; and~~

28 ~~(viii) Developing and conducting workshops and~~
 29 ~~seminars for in-depth professional development in the field of the care and~~
 30 ~~management related to various health issues.~~

31
 32 SECTION 5. Arkansas Code § 20-7-105(a), concerning the proceedings of
 33 the State Board of Health, is amended to read as follows:

34 (a)(1) The State Board of Health shall meet at least one (1) time
 35 every three (3) months ~~and,~~

36 (2) upon ~~upon~~ the call of the President of the State Board of

1 ~~Health, the Director of the Department of Health and Human Services, or a~~
2 majority of the members of the board, the board shall meet at such other
3 times as may be necessary in the interest of public health.

4
5 SECTION 6. Arkansas Code § 20-7-106 is amended to read as follows:
6 20-7-106. Office.

7 The office of the State Board of Health shall be located in Little
8 Rock, and the board shall be furnished with all necessary equipment and
9 supplies, including laboratory supplies, books, stationery, blanks,
10 furniture, etc., as are provided other officers of the state and as are
11 necessary for carrying on the work of the board, and the office is to be
12 provided in a suitable building to be designated by the ~~Governor~~ Director of
13 the Department of Health or the Director of the Division of Health of the
14 Department of Health and Human Services.

15
16 SECTION 7. Arkansas Code § 25-9-101 is amended to read as follows:
17 25-9-101. Creation – Director – Organization – Personnel.

18 (a)(1)(A) ~~There is created the Division of Health of the Department of~~
19 ~~Health and Human Services~~ Department of Health, that is to be established if
20 the Governor orders the separation of the Division of Health of the
21 Department of Health and Human Services from the Department of Health and
22 Human Services.

23 (B) Unless stated otherwise, all references in this
24 chapter to “Director” shall mean the Director of the Department of Health if
25 established, and otherwise the Director of the Division of Health of the
26 Department of Health and Human Services.

27 (2)(A) ~~The executive head of the Division of Health of the~~
28 ~~Department of Health and Human Services shall be the Director of the Division~~
29 ~~of Health of the Department of Health and Human Services~~ Governor shall
30 appoint the Director of the Department of Health if established, and
31 otherwise the Director of the Division of Health of the Department of Health
32 and Human Services.

33 (B) The Director shall:

34 (i) Serve as the executive head of the Department of
35 Health or the Division of Health of the Department of Health and Human
36 Services;

1 (ii) Serve at the pleasure of the Governor;

2 (iii) Act as the Secretary of the Board of Health;

3 and

4 (iv) Serve as the State Health Officer, with

5 appropriate authority to ensure public health and safety, including

6 leadership on health issues related to emergency preparedness and disaster

7 management.

8 ~~(b) The Division of Health of the Department of Health and Human~~
9 ~~Services shall consist of the divisions which existed as of July 1, 1971,~~
10 ~~within the State Board of Health, created by § 20-7-101 et seq., and any~~
11 ~~other divisions or units which may be created by law and placed under the~~
12 ~~Division of Health of the Department of Health and Human Services.~~

13 ~~(e)(b)(1)(A) The Director of the Division of Health of the Department~~
14 ~~of Health and Human Services director, with the advice and consent of the~~
15 ~~Director of the Department of Health and Human Services, Governor, shall~~
16 ~~appoint the heads of the respective units of the Division of Health of the~~
17 ~~Department of Health and Human Services or the Department of Health.~~

18 ~~(B) All other personnel of the Division of Health of the~~
19 ~~Department of Health and Human Services shall be employed by and shall serve~~
20 ~~at the pleasure of the Director of the Department of Health and Human~~
21 ~~Services.~~

22 ~~(2) However, nothing in this section shall be so construed as to~~
23 ~~reduce any right ~~which~~ that an employee of the Division of Health of the~~
24 ~~Department of Health and Human Services or the Department of Health shall~~
25 ~~have has under any civil service or merit system.~~

26 ~~(d)(c)(1) Each unit of the Division of Health of the Department of~~
27 ~~Health and Human Services Department of Health shall be under the direction,~~
28 ~~control, and supervision of the Director of the Department of Health and~~
29 ~~Human Services director.~~

30 ~~(2) The Director of the Division of Health of the Department of~~
31 ~~Health and Human Services, with the consent of the Director of the Department~~
32 ~~of Health and Human Services, director may delegate his or her functions,~~
33 ~~powers, and duties to various units of the Division of Health of the~~
34 ~~Department of Health and Human Services Department of Health as he or she~~
35 ~~shall deem desirable and necessary for the effective and efficient operation~~
36 ~~of the Division of Health of the Department of Health and Human Services~~

1 Department of Health.

2 ~~(e)~~(d)(1) The Division of Health of the Department of Health and Human
3 Services or the Department of Health shall maintain an Office of Oral Health.

4 (2) The Director of the Office of Oral Health shall be an
5 experienced public health dentist licensed to practice under the Arkansas
6 Dental Practice Act, § 17-82-101 et seq.

7 (3) The Director of the Office of Oral Health shall:

8 (A) Plan, direct, and coordinate all dental public health
9 programs with other local, state, and national health programs;

10 (B) Serve as the department's chief advisor on matters
11 involving oral health; and

12 (C) Plan, implement, and evaluate all oral health programs
13 within the department.

14

15 SECTION 8. Arkansas Code § 25-10-101 is amended to read as follows:
16 25-10-101. Creation – Appointment of director.

17 (a) There is created a ~~Department of Health and Human Services~~
18 Department of Human Services.

19 (b)(1) The executive head of the department shall be the Director of
20 the ~~Department of Health and Human Services~~ Department of Human Services.

21 (2) The director shall be appointed by the Governor with the
22 consent of the Senate and shall serve at the pleasure of the Governor.

23

24 SECTION 9. Arkansas Code § 25-10-102 is amended to read as follows:
25 25-10-102. Organization generally.

26 (a) All references in this chapter to "Department" mean the Department
27 of Health and Human Services or, if the Department of Health is established,
28 to the Department of Human Services. All references in this chapter to
29 "Director" shall mean the Director of the Department of Health and Human
30 Services or, if the Department of Health is established, the Director of the
31 Department of Human Services.

32 (b) ~~The Department of Health and Human Services~~ department shall
33 consist of and be operated under an integrated service system consisting of
34 the following ~~twelve (12)~~ divisions with ~~responsibility~~ responsibilities and
35 programs assigned to them as determined by the Director of the ~~Department of~~
36 ~~Health and Human Services:~~

- 1 (1) A Division of Aging and Adult Services;
- 2 (2) A Division of Medical Services;
- 3 (3) A Division of Behavioral Health, which shall include
- 4 community mental health centers, state hospitals, and the Bureau of Alcohol
- 5 and Drug Abuse Prevention;
- 6 (4) A Division of Developmental Disabilities Services, which
- 7 shall include both community programs and human development centers;
- 8 (5) A Division of County Operations;
- 9 (6) A Division of Administrative Services;
- 10 (7) A Division of Youth Services, which shall include serious
- 11 offender and community-based programs and the youth service centers;
- 12 (8) A Division of Volunteerism;
- 13 (9) A Division of State Services for the Blind;
- 14 (10) A Division of Children and Family Services;
- 15 (11) A Division of Child Care and Early Childhood Education; and
- 16 (12) A Division of Health, subject to the establishment of a
- 17 Department of Health.

18 ~~(b)(1)(A)(c)(1)(A)~~ Each division of the ~~Department of Health and Human~~

19 ~~Services~~ department shall be under the direction, control, and supervision of

20 the director.

21 (B) From time to time, the director may transfer or assign

22 existing duties or new programs or duties of the department to offices,

23 sections, or units as he or she deems necessary for the efficient and

24 necessary operation of the department.

25 (C) Prior to implementation of any reorganization, the

26 director shall obtain the advice of the House Interim Committee on State

27 Agencies and Governmental Affairs and the Senate Interim Committee on State

28 Agencies and Governmental Affairs.

29 (2)(A) However, the state institutions and the operation of

30 state institutional programs under the jurisdiction of the Board of

31 Developmental Disabilities Services and the Department of ~~Health and Human~~

32 ~~Services~~ State Institutional System Board, as provided by law, shall be under

33 the control of their respective boards.

34 (B) The boards shall perform their respective functions

35 and duties under the general guidelines and standards promulgated by the

36 director.

1 (3) *The Division of State Services for the Blind and the Board*
2 *of the Division of State Services for the Blind shall continue to function*
3 *within the ~~Department of Health and Human Services~~ department with the powers*
4 *prescribed in § 25-10-201 et seq.*

5
6 SECTION 10. *Arkansas Code §§ 25-10-401 and 25-10-402 are amended to*
7 *read as follows:*

8 25-10-401. *Creation.*

9 *The state institutions ~~of the Department of Health and Human Services,~~*
10 *known as the State Hospital for the Mentally Ill at Little Rock, the long-*
11 *term care facility at Benton, the George W. Jackson Mental Health Center at*
12 *Jonesboro, the youth services centers located at Alexander and North Little*
13 *Rock, and all other facilities owned and operated by the ~~Department of Health~~*
14 *and ~~Human Services~~ department for youth services or mental health treatment*
15 *are consolidated to form the Department ~~of Health and Human Services~~ State*
16 *Institutional System.*

17
18 25-10-402. *Purpose – Guidelines.*

19 (a) *The Department ~~of Health and Human Services~~ State Institutional*
20 *System Board is established to manage the Department ~~of Health and Human~~*
21 *~~Services~~ State Institutional System, as provided and intended by Arkansas*
22 *Constitution, Amendment 33.*

23 (b) *The board shall perform its functions and duties in accordance*
24 *with the general guidelines, policies, and regulations of the Department ~~of~~*
25 *~~Health and Human Services~~ governing divisions, offices, sections, or units*
26 *within the department with respect to budgets, personnel and personnel*
27 *policies, records, purchasing, bookkeeping, and other administrative*
28 *procedures prescribed by the Director of the Department ~~of Health and Human~~*
29 *Services.*

30
31 SECTION 11. EMERGENCY CLAUSE. *It is found and determined by the*
32 *General Assembly of the State of Arkansas that many services delivered by the*
33 *various divisions, offices, and units the Department of Health and Human*
34 *Services are essential to the public health, safety, and welfare; that the*
35 *state fiscal year begins July 1; that beginning the process of decoupling the*
36 *Division of Health of the Department of Health and Human Services from the*

1 Department of Health and Human Services during a fiscal year will cause
2 disruptions of services and unnecessary time, effort, and expense in
3 reallocating appropriations, budgets, personnel, equipment, and capital
4 expenditures during a fiscal year; and that this act is immediately necessary
5 because a delay beyond the beginning of the fiscal year will disrupt
6 essential programs and services. Therefore, an emergency is declared to
7 exist and this act being necessary for the preservation of the public peace,
8 health, and safety shall become effective on:

9 (1) The date of its approval by the Governor;

10 (2) If the bill is neither approved nor vetoed by the Governor,
11 the expiration of the period of time during which the Governor may veto the
12 bill; or

13 (3) If the bill is vetoed by the Governor and the veto is
14 overridden, the date the last house overrides the veto.

15
16 /s/ Steele

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18 APPROVED: 3/19/2007
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