

1 State of Arkansas
2 93rd General Assembly
3 Regular Session, 2021
4

As Engrossed: H2/23/21

A Bill

HOUSE BILL 1488

5 By: Representative Gonzales
6 By: Senator Gilmore
7

For An Act To Be Entitled

9 AN ACT TO AMEND CERTAIN PROVISIONS OF ARKANSAS CODE
10 THAT RESULTED FROM INITIATED ACT 4 OF 1948; TO
11 CLARIFY THE INTENTIONAL TORT EXCEPTION TO THE
12 EXCLUSIVE REMEDY DOCTRINE UNDER THE WORKERS'
13 COMPENSATION LAW WITH REGARD TO CORONAVIRUS 2019
14 (COVID-19); TO DECLARE AN EMERGENCY; AND FOR OTHER
15 PURPOSES.
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Subtitle

18 TO AMEND CERTAIN PROVISIONS OF ARKANSAS
19 CODE THAT RESULTED FROM INITIATED ACT 4
20 OF 1948; TO CLARIFY THE WORKERS'
21 COMPENSATION LAW; AND TO DECLARE AN
22 EMERGENCY.
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26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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28 SECTION 1. TEMPORARY LANGUAGE. DO NOT CODIFY. Legislative intent.

29 (a) It is the intent of the General Assembly to clarify and provide
30 sufficient recourse under the Workers' Compensation Law, § 11-9-101 et seq.,
31 for employees to receive workers' compensation benefits during the
32 coronavirus 2019 (COVID-19) outbreak.

33 (b) This act is intended to be retroactive to March 11, 2020, and to
34 remain in effect for claims filed until May 1, 2023, for the purposes of
35 providing coverage to employees for illness or injury sustained as a result
36 of the coronavirus 2019 (COVID-19) outbreak.



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SECTION 2. Arkansas Code § 11-9-105(a), concerning exclusivity of rights and remedies under the Workers' Compensation Law and resulting from Initiated Act 4 of 1948, is amended to read as follows:

(a)(1) The rights and remedies granted to an employee subject to the provisions of this chapter, on account of injury or death, shall be exclusive of all other rights and remedies of the employee, his or her legal representative, dependents, next of kin, or anyone otherwise entitled to recover damages from the employer, or any principal, officer, director, stockholder, or partner acting in his or her capacity as an employer, or prime contractor of the employer, on account of the injury or death, and the negligent acts of a coemployee shall not be imputed to the employer.

(2) ~~No~~ A role, capacity, or persona of any employer, principal, officer, director, or stockholder other than that existing in the role of employer of the employee shall not be relevant for consideration for purposes of this chapter, and the remedies and rights provided by this chapter shall in fact be exclusive regardless of the multiple roles, capacities, or personas the employer may be deemed to have.

(3) Requiring an employee to perform work when the employer has knowledge that, within the normal course and scope of the employee's job performance, exposure to coronavirus 2019 (COVID-19) or severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or any of its mutations is possible, likely, or certain is not intentional conduct that would remove the employer from the protections of this chapter.

SECTION 3. Arkansas Code § 11-9-601(e), concerning the definition of "occupational disease" as used in the Workers' Compensation Law, is amended to read as follows:

(e)(1)(A) "Occupational disease", as used in this chapter, unless the context otherwise requires, means ~~any~~ a disease that results in disability or death and arises out of and in the course of the occupation or employment of the employee or naturally follows or unavoidably results from an injury as that term is defined in this chapter.

(B) However, a causal connection between the occupation or employment and the occupational disease ~~must~~ shall be established by a preponderance of the evidence.

1 (2) ~~No compensation~~ Compensation shall not be payable for any
2 contagious or infectious disease unless contracted in the course of
3 employment in or immediate connection with a hospital or sanitorium in which
4 persons suffering from that disease are cared for or treated.

5 (3)(A) ~~No compensation~~ Except as applicable to coronavirus 2019
6 (COVID-19) or severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or
7 any of its mutations, compensation shall not be payable for any ordinary
8 disease of life to which the general public is exposed.

9 (B) Coronavirus 2019 (COVID-19) or severe acute
10 respiratory syndrome coronavirus 2 (SARS-CoV-2) or any of its mutations may
11 be established as an occupational disease if all requirements for
12 occupational diseases provided by law are established by the claimant,
13 including the requirements stated in subdivisions (e)(1)(A) and (B) of this
14 section, for the exception provided under subdivision (e)(3)(A) of this
15 section to apply.

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17 SECTION 4. DO NOT CODIFY. RETROACTIVITY. Sections 2 and 3 of this
18 act apply to workers' compensation claims accruing on or filed on and after
19 March 11, 2020.

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21 SECTION 5. DO NOT CODIFY. Temporary legislation.
22 This act expires on May 1, 2023, unless extended by the General
23 Assembly.

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25 SECTION 6. EMERGENCY CLAUSE. It is found and determined by the
26 General Assembly of the State of Arkansas that the risk of exposure to
27 coronavirus 2019 (COVID-19) or to severe acute respiratory syndrome
28 coronavirus 2 (SARS-CoV-2) or any of its mutations creates uncertainty for
29 employees and employers in Arkansas, causing businesses to remain closed and
30 unemployment for Arkansans to increase causing financial concerns for both
31 employees and employers; that protecting employees and employers in Arkansas
32 from the threat of coronavirus 2019 (COVID-19) or of severe acute respiratory
33 syndrome coronavirus 2 (SARS-CoV-2) or any of its mutations and from the
34 impact on employment can encourage businesses to stay open, provide
35 protection for employees returning to work, and thereby reduce unemployment
36 for Arkansans; and that this act is immediately necessary because employees

1 and employers need protection from the threat of exposure to coronavirus 2019
2 (COVID-19) or to severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2)
3 or any of its mutations and from the impact felt on businesses in Arkansas in
4 order to remain open, return to work, and be able to conduct business in
5 Arkansas. Therefore, an emergency is declared to exist, and this act being
6 immediately necessary for the preservation of the public peace, health, and
7 safety shall become effective on:

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

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

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

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15 */s/Gonzales*
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