

**Hall of the House of Representatives**  
83rd General Assembly - Regular Session, 2001  
**Amendment Form**

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**Subtitle of House Bill No. 2646**

"AN ACT TO MAKE TECHNICAL CORRECTIONS TO THE ARKANSAS WORKERS'  
COMPENSATION LAW."

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**Amendment No. 1 to House Bill No. 2646.**

Amend House Bill No. 2646 as originally introduced:

Delete the Title and substitute the following:

"AN ACT TO MAKE TECHNICAL CORRECTIONS TO THE ARKANSAS WORKERS' COMPENSATION LAW BY AMENDING ARKANSAS CODE 11-9-102(9)(D), 11-9-102(17)(A), 11-9-207(a), 11-9-302, 11-9-303, AND 11-9-402; AND BY AMENDING ARKANSAS CODE 11-9-711(b)(1), 11-10-502(e), 11-14-101, 11-14-102(14), AND 11-14-105(a); AND FOR OTHER PURPOSES.

AND

Delete the Subtitle and substitute the following:

"AN ACT TO MAKE TECHNICAL CORRECTIONS TO THE ARKANSAS WORKERS' COMPENSATION LAW; AND FOR OTHER PURPOSES."

AND

Delete everything after the enacting clause and substitute the following:

"SECTION 1. Arkansas Code 11-9-102(9)(D), concerning the definition of "employee" under the Workers' Compensation Law, is amended to read as follows:

(D) Any individual ~~receiving~~ holding from the commission a current certification of noncoverage under this chapter shall ~~thereafter,~~ during the term of his or her certification or any renewals thereof, or until he elects otherwise, whichever time period is shorter, be conclusively presumed not to be an employee for purposes of this chapter or otherwise.

SECTION 2. Arkansas Code 11-9-102(17)(A), concerning definitions under the Workers' Compensation Law, is amended to read as follows:

(17)(A) "State average weekly wage" means the state average weekly wage determined annually by the ~~Director of the Department of Labor~~ Arkansas Employment Security Department in the preceding calendar year pursuant to § 11-10-502.

SECTION 3. Arkansas Code 11-9-207(a), concerning duties and powers of the Workers' Compensation Commission, is amended to add an additional subsection to read as follows:

(14) To transfer the excess of income over expenses from the commission's annual educational conference to Kids' Chance of Arkansas, Inc., a non-profit charitable organization designed to provide scholarships to children of workers who have been killed or become permanently and totally disabled from a compensable injury, including any accumulation from prior years' conferences.

SECTION 4. Arkansas Code 11-9-302 is amended to read as follows:

11-9-302. Qualifying fees for carriers, third party administrators, and self-insurers.

(a) Each carrier writing compensation insurance in this state shall pay to the Insurance Commissioner, in addition to the premium taxes and fees now required under existing laws, at the time of securing the first license to transact business in the state, the sum of five hundred dollars (\$500) for the privilege of qualifying with the commission for the writing of compensation insurance.

(b) At the time of qualifying, each self-insurer or third party administrator shall pay to the Workers' Compensation Commission the sum of one hundred dollars (\$100) for the privilege of qualifying as a self-insurer or third party administrator.

(c) All carriers ~~or~~ self-insurers, or third party administrators qualifying under the provisions of this chapter shall be required to pay this initial assessment before they shall be qualified.

(d) These fees shall be deposited into the Workers' Compensation Fund created in § 11-9-301.

(e) The Workers' Compensation Commission may assess a third party administrator an annual fee of one hundred dollars (\$100).

SECTION 5. Arkansas Code 11-9-303 is amended to read as follows:

11-9-303. Payment of tax by carrier.

(a) In addition to the premium taxes collected from carriers, the carriers shall pay annually to the Workers' Compensation Commission a tax, at the rate to be determined as provided in § 11-9-306 but not to exceed three percent (3%), on all written manual premiums resulting from the writing of workers' compensation insurance on risks within the state.

(b) "Written manual premium" shall mean premium produced in a given year by the manual rates in effect during the experience period and shall exclude the premium produced by the expense constant. Further, written manual premium, for the purpose of this law, means premium before any allowable deviated discounts, any experience rating modification, any premium discount, any reinsurance or deductible arrangement as common with fronting carriers, any dividend consideration, or other trade discount.

(c)(1) This tax shall be collected by the Insurance Commissioner from the carriers at the same time and in the same manner as provided in the premium tax sections of the law of this state and deposited into the funds created in § 11-9-301.

~~(2) Immediately upon deposit into the funds created in § 11-9-301, the Chief Fiscal Officer of the State shall transfer the first one hundred thousand dollars (\$100,000) of said taxes into the State Insurance~~

~~Department Trust Fund used for the maintenance, operation, and support of the State Insurance Department; provided, however, that the total of these transferred funds combined together with the transferred funds provided in § 11-9-305(d) [Repealed] for the maintenance, operation, and support of the department shall not exceed one hundred thousand dollars (\$100,000) in any one (1) fiscal year.~~

~~(3)(2)~~ Said transfer from the funds created in § 11-9-301 shall be in the same proportions that deposits were made into the three (3) funds as set forth in § 11-9-306(a)-(c).

(d) Assessments upon which premium taxes are based shall be made on forms prescribed jointly by the Insurance Commissioner and the Workers' Compensation Commission.

(e) Premium tax payments shall be made by check payable both to the Workers' Compensation Commission ~~and to the appropriate funds created in § 11-9-301.~~

SECTION 6. Arkansas Code 11-9-402 is amended to read as follows:

11-9-402. Liability of prime contractors and subcontractors - Sole proprietorships or partnerships.

(a) Where a subcontractor fails to secure compensation required by this chapter, the prime contractor shall be liable for compensation to the employees of the subcontractor.

(b)(1) Any contractor or his insurance carrier who shall become liable for the payment of compensation on account of injury to or death of an employee of his subcontractor may recover from the subcontractor the amount of the compensation paid or for which liability is incurred.

(2) The claim for the recovery shall constitute a lien against any moneys due or to become due to the subcontractor from the prime contractor.

(3) A claim for recovery, however, shall not affect the right of the injured employee or the dependents of the deceased employee to recover compensation due from the prime contractor or his insurance carrier.

(c)(1)(A) When a sole proprietorship or partnership fails to elect to cover the sole proprietor or partners under this chapter, the prime contractor is not liable under this chapter for injuries sustained by the sole proprietor or partners if the sole proprietor or partners are not employees of the prime contractor.

(B)(i) A sole proprietor or the partners of a partnership who do not elect to be covered by this chapter and be deemed employees thereunder and who deliver to the prime contractor a current certification of noncoverage issued by the Workers' Compensation Commission shall be conclusively presumed not to be covered by the law or to be employees of the prime contractor during the term of his certification or any renewals thereof.

(ii) This provision shall not affect the rights or coverage of any employees of the sole proprietor or of the partnership.

(2) Furthermore, the prime contractor's insurance carrier is not liable for injuries to the sole proprietor or partners described in this section who have provided a current certification of noncoverage, and the carrier shall not include compensation paid by the prime contractor to the sole proprietor or partners described above in computing the insurance premium for the prime contractor.

(3)(A) Any prime contractor who, after being presented with a current certification of noncoverage by a sole proprietor or partnership, nonetheless compels the sole proprietor or partnership to pay or contribute to workers' compensation coverage of that sole proprietor or partnership shall be guilty of a Class D felony.

(B) Further, any prime contractor who compels a sole proprietor or partnership to obtain a certification of noncoverage when the sole proprietor or partnership does not desire to do so is guilty of a Class D felony.

(C) Further, any applicant who makes a false statement when applying for a certification of noncoverage, or any renewals thereof, shall be guilty of a Class D felony.

(d)(1) A certification of noncoverage issued by the Workers' Compensation Commission after July 1, 2001, shall be valid for two (2) years after the effective date stated thereon. Both the effective date and the expiration date must be listed on the face of the certificate by the commission. The certificate must expire at midnight, two (2) years from its issue date, as noted on the face of the certificate.

(2) Any certification of noncoverage which is in effect on July 1, 2001, shall expire as follows:

(A) A certification of noncoverage issued in the years 1993 or 1994 shall expire at midnight on September 30, 2001;

(B) A certification of noncoverage issued in the years 1995 or 1996 shall expire at midnight on December 31, 2001;

(C) A certification of noncoverage issued in the years 1997 or 1998 shall expire at midnight on March 31, 2002;

(D) A certification of noncoverage issued in the years 1999 or 2000 shall expire at midnight on June 30, 2002;

(3) The commission may assess a fee, not to exceed fifty dollars (\$50.00), with each application for a certification of noncoverage or any renewals thereof.

(4) Any certification of noncoverage issued by the commission shall contain the social security number and notarized signature of the applicant. The notarization shall be in a form and manner prescribed by the commission.

(5) The commission may by rule prescribe forms and procedures for issuing or renewing a certification of noncoverage.

SECTION 7. Arkansas Code 11-9-711(b)(1), concerning appeals of a compensation order or award made by the Workers' Compensation Commission, is amended by adding an additional subdivision to read as follows:

(C) The commission may assess and collect an appeal processing fee, not to exceed fifteen dollars (\$15.00), from the appellant and, if cross appealed, the cross appellant.

SECTION 8. Arkansas Code 11-10-502(e), concerning weekly benefit amounts under the Arkansas Employment Security Law, is amended to read as follows:

(e) ~~On June 1 of each year, the Director of the Department of Labor~~ Arkansas Employment Security Department shall determine the average weekly wage for insured employment for the preceding calendar year in the following manner:

(1) The sum of the total monthly employment reported for the calendar year shall be divided by twelve (12) to determine the average monthly employment;

(2) The sum of the total wages reported for the previous calendar year shall be divided by the average monthly employment to determine the average annual wage;

(3) The average annual wage shall be divided by fifty-two (52) to determine the average weekly wage for insured employment.

SECTION 9. Arkansas Code 11-14-101 is amended to read as follows:  
11-14-101. Legislative intent.

(a) It is the intent of the General Assembly to promote drug-free workplaces in order that employers in this state may be afforded the opportunity to maximize their levels of productivity, enhance their competitive positions in the marketplace, and reach their desired levels of success without experiencing the costs, delays, and tragedies associated with work-related accidents resulting from drug or alcohol abuse by employees. It is further the intent of the General Assembly that drug and alcohol abuse be discouraged and that employees who choose to engage in drug or alcohol abuse face the risk of unemployment and the forfeiture of workers' compensation benefits.

(b) If an employer implements a drug-free workplace program in accordance with this chapter which includes notice, education, and procedural requirements for testing for drugs and alcohol pursuant to rules developed by the Workers' Health and Safety Division of the Workers' Compensation Commission, the covered employer may require the employee to submit to a test for the presence of drugs or alcohol, and if a drug or alcohol is found to be present in the employee's system at a level prescribed by statute or by rule adopted pursuant to this chapter, the employee may be terminated and may ~~forfeit eligibility for~~ be precluded from workers' compensation medical and indemnity benefits. However, a drug-free workplace program must require the covered employer to notify all employees that it is a condition of employment for an employee to refrain from reporting to work or working with the presence of drugs or alcohol in the employee's body, and if an injured employee refuses to submit to a test for drugs or alcohol, the employee ~~forfeits eligibility for~~ may be precluded from workers' compensation medical and indemnity benefits. In the event of termination, an employee shall be entitled to contest the test results before the Department of Labor.

(c) Nothing in the act, which originated as House Bill 2646 of 2001, nor in Act 1552 of 1999 shall impliedly repeal any part of Act 796 of 1993. Act 796 of 1993 is expressly reaffirmed by this act, which originated as House Bill 2646 of 2001.

SECTION 10. Arkansas Code 11-14-102(14), concerning definitions as used in the chapter on voluntary program for drug-free workplaces, is amended to read as follows:

(14) "~~Drug testing~~ Medical review officer" means a licensed physician, pharmacist, pharmacologist or similarly qualified individual employed with or contracted with a covered employer:

(A) Who has knowledge of substance abuse disorders, laboratory testing procedures, and chain of custody collection procedures;

(B) Who verifies positive, confirmed test results; and

(C) Who has the necessary medical training to interpret and evaluate an employee's positive test result in relation to the employee's medical history or any other relevant biomedical information;

SECTION 11. Arkansas Code 11-14-105(a), concerning a written policy statement under the chapter on voluntary program for drug-free workplaces, is amended to read as follows:

(a) One (1) time only prior to testing, a covered employer shall give all employees and job applicants for employment a written policy statement which contains:

(1) A general statement of the covered employer's policy on employee drug or alcohol use, which must identify:

(A) The types of drug or alcohol testing an employee or job applicant may be required to submit to, including reasonable-suspicion drug or alcohol testing or drug or alcohol testing conducted on any other basis; and

(B) The actions the covered employer may take against an employee or job applicant on the basis of a positive confirmed drug or alcohol test result;

(2) A statement advising the employee or job applicant of the existence of this section;

(3) A general statement concerning confidentiality;

(4) Procedures for employees and job applicants to confidentially report to a drug testing officer the use of prescription or nonprescription medications to a ~~drug testing~~ medical review officer after being tested, but only if the testing process has revealed a positive result for the presence of alcohol or drug use;

(5) The consequences of refusing to submit to a drug or alcohol test;

(6) A representative sampling of names, addresses and telephone numbers of employee assistance programs and local drug or alcohol rehabilitation programs;

(7) A statement that:

(A) An employee or job applicant who receives a positive confirmed test result may contest or explain the result to the ~~drug testing~~ medical review officer within five (5) working days after receiving written notification of the test result;

(B) If an employee's or job applicant's explanation or challenge is unsatisfactory to the drug testing review officer, the ~~drug testing~~ medical review officer shall report a positive test result back to the covered employer; and

(C) A person may contest the drug or alcohol test result pursuant to rules adopted by the Workers' Health and Safety Division of the Workers' Compensation Commission;

(8) A statement informing the employee or job applicant of the employee's responsibility to notify the laboratory of any administrative or civil action brought pursuant to this section;

(9) A list of all drug classes for which the employer may test;

(10) A statement regarding any applicable collective bargaining agreement or contract and any right to appeal to the applicable court;

(11) A statement notifying employees and job applicants of their right to consult with a ~~drug testing~~ medical review officer for technical

information regarding prescription or nonprescription medication; and  
(12) A statement complying with the requirements for notice  
under § 11-14-101.

SECTION 12. All laws and parts of laws expressly in conflict with this  
act are repealed. No part of Act 796 of 1993 shall be impliedly repealed by  
this act or Act 1552 of 1999."

**The Amendment was read** \_\_\_\_\_  
**By: Representative Hendren**  
**DF/CDS** \_\_\_\_\_  
**CDS390** **Chief Clerk**