

As Engrossed: 2/22/91 2/28/91

1 **State of Arkansas**

2 **78th General Assembly**

3 **Regular Session, 1991**

4 **By: Representatives Flanagan and Newman**

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For An Act To Be Entitled

8 "AN ACT TO AMEND TITLE 23 OF ARKANSAS CODE ANNOTATED OF
9 1987 TO PROVIDE FOR A WORKERS' COMPENSATION INSURANCE PLAN
10 FOR RISKS REJECTED BY INSURANCE COMPANIES; TO ASSIGN THE
11 ADMINISTRATION OF THE WORKERS' COMPENSATION INSURANCE PLAN
12 TO THE INSURANCE COMMISSIONER; AND FOR OTHER PURPOSES."

13

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

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16 SECTION 1. Chapter 67 of Title 23 of the Arkansas Code is hereby
17 amended by inserting an additional subchapter to read as follows:

18 "23-67-201. This Act shall be known and cited as the "Arkansas Workers'
19 Compensation Insurance Plan.

20

21 23-67-202. Purpose.

22 The purpose of this Act is to amend Title 23 of Arkansas Code Annotated
23 of 1987 to provide for the establishment of a mandatory workers' compensation
24 insurance plan to assure coverage for employers who are in good faith
25 entitled, but unable to procure, workers' compensation insurance in this
26 State, and to provide that the operation and regulation of the Arkansas
27 Workers' Compensation Insurance Plan shall be the responsibility of the
28 Insurance Commissioner.

29

30 23-67-203. Establishment, Operation and Regulation.

31 The Insurance Commissioner shall be responsible for the establishment,
32 operation and regulation of the Arkansas Workers' Compensation Insurance Plan
33 pursuant to the provisions of this Act.

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35 23-67-204. Plan for Coverage.

1 (1) The Arkansas Workers' Compensation Insurance Plan shall give
2 consideration to:
3 (a) the need for adequate and readily accessible coverage;
4 (b) optional methods of improving the market affected;
5 (c) the need for reasonable underwriting standards;
6 (d) the need for adequate supervisory and servicing procedures to
7 ensure proper operation of the Plan;
8 (e) the need to establish procedures that will have minimum
9 interference with the voluntary market;
10 (f) distributing the obligations imposed by the Plan and any profits or
11 losses experienced by the Plan equitably and efficiently among the
12 participating insurers; and
13 (g) establishing procedures for applicants and participants to have
14 their grievances reviewed.
15 (2) The Plan shall provide for the issuance of a policy covering the
16 entire liability of the employer as to the business for which workers'
17 compensation insurance has been rejected.
18 (3) The rates and supplementary rate information of the Arkansas
19 Workers' Compensation Insurance Plan shall meet the standards specified in
20 Arkansas Code Annotated § 23-67-108.
21 (4) The Plan may obtain reinsurance for any part or all of its risks.
22 (5) The Commissioner, at his discretion, is authorized to delegate all
23 or any part of the *Commissioner's* responsibility to establish and operate the
24 Plan, provided however, that any such Plan or plan of operation and any
25 amendments thereto must receive the prior approval of the Commissioner. Any
26 person or entity to whom the establishment, implementation and/or operation of
27 the Plan is delegated pursuant to this subsection shall file with the
28 Commissioner all policy forms, forms, rates or supplementary rate information
29 necessary to effectuate the Plan.
30
31 23-67-205. Mandatory Participation in the Arkansas Workers'
32 Compensation Insurance Plan.
33 All insurers licensed to transact workers' compensation and employers'
34 liability insurance in this State, as defined in Arkansas Code Annotated § 23-
35 62-105(a)(3) and who have qualified to transact workers' compensation

1 insurance pursuant to Arkansas Code Annotated § 11-9-302(a) shall participate
 2 in the equitable apportionment among them of risks eligible for the Arkansas
 3 Workers' Compensation Insurance Plan. Participation in the Plan expenses,
 4 profits, and losses shall be in the proportion that the net direct workers'
 5 compensation insurance premiums of each member written in this State during
 6 the preceding calendar year bears to the aggregate net direct workers'
 7 compensation insurance premiums of all members of the Plan written in this
 8 State during the preceding calendar year.

9

10 23-67-206. Employers Entitled to Insurance.

11 Any employer required to secure the payment of compensation under the
 12 provisions of Arkansas Code Annotated § 11-9-404(a)(1) or any similar federal
 13 law shall be entitled to insurance under the provisions of this Act, provided:

14 (a) the employer pays his premium based upon the premium payment rules
 15 approved by the Commissioner;

16 (b) the employer has complied with all effective laws, orders, rules or
 17 regulations made by public authorities relating to the welfare, health, and
 18 safety of employees; and

19 (c) the employer is not in default of premium payment(s) owed for
 20 workers' compensation insurance.

21

22 23-67-207. Cancellation of Policy.

23 If, after the issuance of a policy providing insurance pursuant to the
 24 provisions of this Act, the insurer which issued the policy finds that the
 25 employer to whom he policy was issued is not or has ceased to be entitled to
 26 the insurance, the insurer shall have the right to cancel the policy in
 27 accordance with Arkansas Code Annotated § 11-9-408(b).

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29 23-67-208. Failure of Insurer to Comply.

30 If any insurer refuses or neglects to comply with the provisions of this
 31 Act or with any order or ruling made by the Commissioner pursuant to this Act,
 32 the insurer shall be subject to the administrative penalties provided for in
 33 the Insurance Code.

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35 23-67-209. Review.

1 Any person aggrieved by an order or ruling made by the Commissioner
2 under the provisions of this Act shall have the right to appeal the order or
3 ruling pursuant to Arkansas Code Annotated § 23-61-307.

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5 23-67-210. Rules and Regulations.

6 The Insurance Commissioner is authorized to promulgate such reasonable
7 rules and regulations as are necessary to carry out the provisions of this
8 Act."

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10 SECTION 2. All provisions of this Act of a general and permanent nature
11 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
12 Revision Commission shall incorporate the same in the Code.

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14 SECTION 3. If any provision of this Act or the application thereof to
15 any person or circumstance is held invalid, such invalidity shall not affect
16 other provisions or applications of the Act which can be given effect without
17 the invalid provision or application, and to this end the provisions of this
18 Act are declared to be severable.

19

20 SECTION 4. (a) Arkansas Code 11-9-409 is hereby repealed.

21 (b) All laws and parts of laws in conflict with this Act are hereby
22 repealed.

23

24 SECTION 5. EMERGENCY CLAUSE. It is hereby found and determined by the
25 General Assembly that the workers' compensation risk pool is being transferred
26 by this Act from the Workers' Compensation Commission to the Insurance
27 Department; that the transfer should become effective at the beginning of the
28 next fiscal year in order to comport with the appropriations for the next
29 fiscal year for the Workers' Compensation Commission and the Insurance
30 Department; that this Act may not go into effect on July 1, 1991 unless this
31 emergency clause is adopted. Therefore, an emergency is hereby declared to
32 exist and this Act being immediately necessary for the preservation of the
33 public peace, health and safety shall be in full force and effect from and
34 after July 1, 1991.

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/s/Flanagin and Newman