

1 State of Arkansas

2 80th General Assembly

A Bill

3 Regular Session, 1995

HOUSE BILL

1150

4 By: Representatives D. Wood, M. Wilson, and Cash

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For An Act To Be Entitled

8 "AN ACT TO AMEND ARKANSAS CODE ANNOTATED §11-9-404 TO
9 CHANGE THE REQUIREMENTS FOR ESTABLISHING SELF-INSURANCE
10 GROUPS FOR WORKERS' COMPENSATION AND TO CREATE SEPARATE
11 SELF-INSURER GROUPS; TO DECLARE AN EMERGENCY; AND FOR
12 OTHER PURPOSES."

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Subtitle

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"TO CHANGE THE REQUIREMENTS FOR
ESTABLISHING *SELF-INSURER* GROUPS FOR
WORKERS_ COMPENSATION"

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

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21 SECTION 1. Arkansas Code Annotated 11-9-404 is amended to read as
22 follows:

23 "11-9-404. Security for compensation.

24 (a) Every employer shall secure the payment of compensation under this
25 chapter:

26 (1) By insuring and keeping insured the payment of the
27 compensation with any carrier authorized to write workers_ compensation
28 insurance;

29 (2) By furnishing satisfactory proof to the commission of his
30 financial ability to pay compensation and receiving an authorization from the
31 commission to pay compensation directly.

32 (A) The commission, as a condition to such authorization,
33 may require the employer, except municipalities, counties, or the State of
34 Arkansas or its political subdivisions, to deposit in a depository designated
35 by the commission either an indemnity bond, irrevocable letter of credit, or

1 securities of any kind and in an amount determined by the commission, subject
2 to such reasonable conditions as the commission may prescribe. The
3 conditions shall include authorization to the commission, in case of default,
4 to sell any securities sufficient to pay compensation awards or to bring suit
5 on the bonds or the letter of credit to procure prompt payment of
6 compensation under this chapter;

7 (B) Any employer securing compensation in accordance with
8 the provisions of subdivision (a)(2) of this section shall be known as a
9 self-insurer and shall be classed as a carrier of his own insurance;

10 (C) A self-insurer may have the privilege of securing
11 portions of the payment of compensation under this chapter as he shall elect
12 by insuring the portions with a company approved by the commission. The
13 liability of the company shall be limited to those features and liabilities
14 of this chapter as are expressly stated, and none other;

15 (3) *The commission, under such rules and regulations as it may*
16 *prescribe, may permit two (2) or more employers engaged in the same type of*
17 *business activity or pursuit to enter into agreements to pool their*
18 *liabilities under this section for the purposes of qualifying as*
19 *self-insurers, and each such approved group shall be classified as a*
20 *homogeneous self-insurer. The commission, under such rules and regulations*
21 *as it may prescribe, may permit two (2) or more employers who are members of*
22 *the same trade or professional association to enter into agreements to pool*
23 *their liabilities under this section for the purposes of qualifying as*
24 *self-insurers, and each such approved group shall be classified as a common*
25 *self-insurer. The trade or professional association shall have been in*
26 *active existence for at least three (3) years and such associations shall*
27 *have a constitution or by-laws and all trustees shall be participants in the*
28 *common self-insurer program; shall have members that support the association*
29 *by regular payment of dues on an annual, semi-annual, quarterly, or monthly*
30 *basis; and shall be created in good faith for purposes other than that of*
31 *creating workers' compensation common self-insurer pools. No two (2) trade*
32 *or professional associations shall be allowed to combine or join each other*
33 *and qualify as a common self-insurer. In order to qualify group*
34 *self-insurers, these groups shall furnish to or satisfy the commission as to*
35 *the following:*

1 (A) An application on a form prescribed by the commission
2 by an elected board of trustees to establish a self-insurance fund to be
3 administered under the direction of the trustees. The application shall be
4 accompanied by:

5 (i) An indemnity agreement in a form satisfactory to
6 the commission jointly and severally binding the *groups* and each member of
7 the *groups* to comply with the provisions of the Workers_ Compensation Law;
8 and

9 (ii) An individual application by each member of the
10 *groups* applying for coverage in the fund;

11 (B) A current, audited financial statement of each member
12 of the *groups* showing a combined net worth of all members applying for
13 coverage of not less than one million dollars (\$1,000,000), a combined ratio
14 of current assets to current liabilities of not less than one-to-one, and
15 working capital of an amount establishing financial ability and liquidity
16 sufficient to pay normal compensation claims promptly;

17 (C)(i) That the *groups deposit and maintain* with the
18 commission acceptable securities or *have posted* a surety bond issued by a
19 corporate surety authorized to do business in the State of Arkansas, in an
20 amount determined by the commission, but not less than two hundred thousand
21 dollars (\$200,000).

22 (ii) However, this subdivision shall not be
23 applicable to municipalities, counties, or the State of Arkansas and its
24 political subdivisions;

25 (D) That there exist ample facilities and competent
26 personnel of good character within the *groups*, or through an approved service
27 organization, for the *groups to service their own programs* with respect to
28 underwriting matters, claims and adjusting, industrial safety engineering,
29 accounting, and financial management;

30 (E) That the *groups maintain* excess insurance with an
31 insurance company authorized to do business in this state in an amount
32 acceptable to the commission. However, this subdivision shall not be
33 applicable to municipalities, counties, or the State of Arkansas and its
34 political subdivisions;

35 (F) That such financial statements, payroll records,

1 accident experience, and compensation reports and such other reports and
2 statements are filed at such time and in such manner as the commission shall
3 require. However, any fund which fails or refuses to file the reports within
4 the time limits prescribed by the commission shall be subject to a civil
5 penalty in such amount as the commission may prescribe not to exceed one
6 hundred dollars (\$100) per infraction per day, and the failure or refusal may
7 be considered good cause for revocation or suspension of self-insurance
8 privileges;

9 (4) Each member of the *groups* shall file financial reports and
10 statements at such times and in such manner as the commission may require to
11 satisfy itself as to the continued financial stability of the member;

12 (5) In order to continue to qualify as a *homogenous self-insurer*
13 *fund or common self-insurer fund*, the *groups* shall continue to meet the
14 minimum requirements as set forth in subdivision (a)(3) of this section or as
15 prescribed by the commission.

16 (b)(1) Except for the initial qualification of the *groups*, a certified
17 audited financial statement shall not be required of any member of a group
18 either for initial membership or as a condition for continued membership in
19 the group;

20 (2) However, each financial statement filed with the commission
21 shall be duly certified by the president and treasurer of the member in the
22 case of a corporation, and by the owner and general partners, respectively,
23 in the case of an individual proprietorship or partnership, to the effect
24 that such financial statement is true and correct to the best of the
25 knowledge and belief of the officer, individual owner, or partner and truly
26 reflects the financial condition of the member.

27 (c) Any person who knowingly files a false or fraudulent financial
28 statement under the provisions of this chapter shall, upon conviction, be
29 fined not more than ten thousand dollars (\$10,000) or imprisoned not more
30 than five (5) years or both.

31 (d) Jurisdiction for the enforcement of the provisions of this chapter
32 or any appeal therefrom shall be in the Circuit Court of Pulaski County. The
33 underlying purpose of this chapter is to assure the payment of benefits due
34 employees, and this chapter shall be liberally construed to that end.

35 (e) The commission may suspend or revoke any authorization to a

1 self-insurer for a good cause shown after a hearing at which the self-insurer
2 shall be entitled to be heard in person or by counsel and to present
3 evidence. No suspension or revocation shall affect the liability of any
4 self-insurer already incurred.

5 (f) Authorization to write compensation insurance under this chapter
6 shall be given to a carrier only after the carrier has received a certificate
7 of authority from the State Insurance Commissioner to transact the business
8 of workers_ compensation insurance in Arkansas and the commission has been
9 notified in writing of the issuance of the certificate of authority."

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11 *SECTION 2. Arkansas Code Annotated § 11-9-901(a) is hereby amended to*
12 *read as follows:*

13 *"(a) The Workers' Compensation Commission is hereby authorized to*
14 *recognize two separate entities formed under the Arkansas Nonprofit*
15 *Corporation Act, §§ 4-28-201 - 4-28-206 and §§ 4-28-209 - 4-28-223, to*
16 *function as guaranty funds for Arkansas workers' compensation self-insurers*
17 *in the private sector. One (1) guaranty fund will be established for*
18 *individual self-insurers and homogeneous self-insurer groups, as defined in*
19 *§ 11-9-404(a)(3). A separate guaranty fund will be established for common*
20 *self-insurer groups, as defined in § 11-9-404(a)(3). The two (2) funds shall*
21 *be created, funded, and administered completely independent from each other.*
22 *The assets of the two (2) funds shall remain separate for all purposes,*
23 *cannot be combined, and the assets of one (1) fund shall not be utilized to*
24 *satisfy the obligations of the other fund."*

25

26 *SECTION 3. Arkansas Code Annotated § 11-9-903 is hereby amended to*
27 *read as follows:*

28 *"11-9-903. Liability.*

29 *There shall be no liability on the part of and no cause of action of*
30 *any nature shall lie, whether at law or in equity, against any agent or*
31 *employee of the two (2) corporations, their boards of directors, any Arkansas*
32 *workers' compensation self-insurer, the Workers' Compensation Commission or*
33 *any of its representatives on account of any action or inaction by any of*
34 *them in the administration of the workers' compensation self-insurer guaranty*
35 *funds or the performance of their duties in connection therewith."*

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2 SECTION 4. Arkansas Code Annotated § 11-9-904 is hereby amended to
3 read as follows:

4 "11-9-904. Amount of fund - Assessment - Inadequacy.

5 (a) Each corporation acting as the guaranty fund shall independently
6 determine periodically the amount of money each Arkansas workers'
7 compensation self-insurer should contribute to each fund in order to provide
8 an adequate pool of money to pay workers' compensation benefits owed by an
9 Arkansas self-insurer when such self-insurer fails to meet its workers'
10 compensation benefits obligations.

11 (b) The Workers' Compensation Commission shall assess all workers'
12 compensation self-insurers in an amount determined by each corporation, and
13 the commission shall transmit the moneys collected to each corporation to be
14 used solely to make workers' compensation benefit payments from each fund and
15 to defray the expenses of each fund.

16 (c) At any time that a workers' compensation self-insurer guaranty
17 fund becomes inadequate to make payments to its claimants, the balance of
18 that fund shall be prorated equally among the claimants, and the Arkansas
19 workers' compensation self-insurers who are members of that fund shall be
20 assessed an amount necessary to pay the outstanding claims and expenses and
21 replenish that fund. The inadequacy of one fund to make payments to
22 claimants shall have no effect on the operation of the remaining fund nor
23 shall the assets of the remaining fund be utilized in any manner to satisfy
24 the claims of claimants to the fund suffering from the inadequacy."

25

26 SECTION 5. Arkansas Code Annotated § 11-9-905 is hereby amended to
27 read as follows:

28 "11-9-905. Report to board of directors on financial condition of
29 self-insurer.

30 The Workers' Compensation Commission shall report to the board of
31 directors of each corporation when the commission has reasonable cause to
32 believe that the payment of potential claims by an Arkansas workers'
33 compensation self-insurer is or may be jeopardized by the existing or
34 potential financial condition of the self-insurer. The board of directors of
35 the corporation which has the affected self-insurer as a member shall, based

1 on such information as is reasonably available, report to the commission upon
2 all matters germane to the solvency, liquidation, rehabilitation, or
3 conservation of any workers' compensation self-insurer, and such reports
4 shall not be deemed public documents under the Arkansas Freedom of
5 Information Act, § 25-19-101 et seq., or any other law."
6

7 SECTION 6. Arkansas Code Annotated § 11-9-906 is hereby amended to
8 read as follows:

9 "11-9-906. Money to be vested in corporation - Annual audit.

10 (a) Moneys collected by the Arkansas Workers' Compensation Commission
11 and dispersed to each corporation shall be vested in the corporation and
12 shall not be deemed state property and shall not be subject to appropriation
13 by the General Assembly.

14 (b) Each corporation shall annually submit to an audit by an
15 independent certified public accountant, and a copy of the audit report shall
16 be transmitted to the Arkansas Workers' Compensation Commission."
17

18 SECTION 7. Arkansas Code Annotated § 11-9-907 is hereby amended to
19 read as follows:

20 "11-9-907. Investment - Use of funds.

21 The board of directors of each corporation shall direct the investment
22 of moneys in each workers' compensation self-insurers guaranty fund, and all
23 returns on the investments shall be retained in each fund. The moneys in each
24 fund shall be used solely to compensate persons entitled to receive workers'
25 compensation benefits from an Arkansas self-insurer which is unable to meet
26 its workers' compensation benefits obligations and to defray the expenses of
27 each fund."
28

29 SECTION 8. Arkansas Code Annotated § 11-9-908 is hereby amended to
30 read as follows:

31 "11-9-908. Subrogation.

32 (a) Each corporation shall have full rights of subrogation against any
33 source of payment or reimbursement for payments by the corporation on behalf
34 of an Arkansas workers' compensation self-insurer.

35 (b) Each corporation shall have a right of recovery through the

1 maintenance of an action against any third party, other than a coemployee,
2 who is in any way responsible or liable for injury or death to a covered
3 worker."
4

5 SECTION 9. Arkansas Code Annotated § 11-9-909 is hereby amended to
6 read as follows:

7 "11-9-909. Action against self-insurer.

8 (a) Each corporation is also authorized to take all necessary action,
9 including bringing an action at law or in equity, to seek any available
10 relief as against any workers' compensation self-insurer, whether the
11 self-insurer has paid all assessments levied by the Workers' Compensation
12 Commission on behalf of the corporation.

13 (b) If a corporation is required to bring an action at law or in
14 equity to enforce any obligations, rights, or duties as regards a workers'
15 compensation self-insurer, the court may award reasonable attorneys' fees and
16 costs to that corporation."
17

18 SECTION 10. Arkansas Code Annotated § 11-9-910 is hereby amended to
19 read as follows:

20 "11-9-910. Private sector participants to be members of corporation -
21 Revocation of self-insurer's authority.

22 All private sector participants in the Arkansas workers' compensation
23 self-insurers program may be members of one of the corporations acting as
24 guaranty funds and the commission may revoke any such self-insurer's
25 authority to act as a workers' compensation self-insurer if the self-insurer
26 fails to maintain membership in the applicable corporation or fails to pay
27 the assessments levied by the commission under this subchapter."
28

29 SECTION 11. All provisions of this act of a general and permanent
30 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
31 Code Revision Commission shall incorporate the same in the Code.
32

33 SECTION 12. If any provision of this act or the application thereof to
34 any person or circumstance is held invalid, such invalidity shall not affect
35 other provisions or applications of the act which can be given effect without

1 the invalid provision or application, and to this end the provisions of this
2 act are declared to be severable.

3

4 SECTION 13. All laws and parts of laws in conflict with this act are
5 hereby repealed.

6

7 SECTION 14. EMERGENCY. *It is hereby found and determined by the*
8 *General Assembly that many of the small business operators of the state of*
9 *Arkansas are currently being forced to pay excessive rates to provide workers*
10 *compensation insurance for their employees and that the immediate passage of*
11 *this act is necessary to grant them relief and to continue coverage for their*
12 *employees. Therefore, an emergency is hereby declared to exist and this act*
13 *being necessary for the immediate preservation of the public peace, health*
14 *and safety shall be in full force and effect on and after its passage.*

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/s/Rep. D. Wood, et al

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