

1 State of Arkansas  
2 80th General Assembly  
3 Regular Session, 1995

# A Bill

HOUSE BILL 1393

4 By: Representatives Flanagin, Fletcher, Calhoun, and Goodwin

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## For An Act To Be Entitled

8 "AN ACT TO AMEND ARKANSAS CODE ANNOTATED §11-9-404 TO  
9 ALLOW COMPLEMENTARY BUSINESSES ON ADJACENT PROPERTIES AND  
10 UNDER THE SAME OWNERSHIP TO POOL THEIR WORKERS\_  
11 COMPENSATION LIABILITIES; AND FOR OTHER PURPOSES."

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## Subtitle

14 "TO ALLOW COMPLEMENTARY BUSINESSES ON  
15 ADJACENT PROPERTIES AND UNDER THE SAME  
16 OWNERSHIP TO POOL THEIR WORKERS\_  
17 COMPENSATION LIABILITIES"

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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 a common type of  
 17 business activity or pursuit or complementary business activities on adjacent  
 18 properties and under the same ownership such as a motel and restaurant to  
 19 enter into agreements to pool their liabilities under this section for the  
 20 purposes of qualifying as self-insurers, and each employer member of such  
 21 approved group shall be classified as a self-insurer. In order to qualify as  
 22 a group self-insurer, the group shall furnish to or satisfy the commission as  
 23 to the following:

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

28 (i) An indemnity agreement in a form satisfactory to  
 29 the commission jointly and severally binding the group and each member of the  
 30 group to comply with the provisions of the Workers\_ Compensation Law; and

31 (ii) An individual application by each member of the  
 32 group applying for coverage in the fund;

33 (B) A current, audited financial statement of each member  
 34 of the group showing a combined net worth of all members applying for  
 35 coverage of not less than one million dollars (\$1,000,000), a combined ratio

1 of current assets to current liabilities of not less than one-to-one, and  
 2 working capital of an amount establishing financial ability and liquidity  
 3 sufficient to pay normal compensation claims promptly;

4 (C)(i) That the group deposits and maintains with the  
 5 commission acceptable securities or has posted a surety bond issued by a  
 6 corporate surety authorized to do business in the State of Arkansas, in an  
 7 amount determined by the commission, but not less than two hundred thousand  
 8 dollars (\$200,000).

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

12 (D) That there exist ample facilities and competent  
 13 personnel of good character within the group, or through an approved service  
 14 organization, for the group to service its own program with respect to  
 15 underwriting matters, claims and adjusting, industrial safety engineering,  
 16 accounting, and financial management;

17 (E) That the group maintains excess insurance with an  
 18 insurance company authorized to do business in this state in an amount  
 19 acceptable to the commission. However, this subdivision shall not be  
 20 applicable to municipalities, counties, or the State of Arkansas and its  
 21 political subdivisions;

22 (F) That such financial statements, payroll records,  
 23 accident experience, and compensation reports and such other reports and  
 24 statements are filed at such time and in such manner as the commission shall  
 25 require. However, any fund which fails or refuses to file the reports within  
 26 the time limits prescribed by the commission shall be subject to a civil  
 27 penalty in such amount as the commission may prescribe not to exceed one  
 28 hundred dollars (\$100) per infraction per day, and the failure or refusal may  
 29 be considered good cause for revocation or suspension of self-insurance  
 30 privileges;

31 (4) Each member of the group shall file financial reports and  
 32 statements at such times and in such manner as the commission may require to  
 33 satisfy itself as to the continued financial stability of the member;

34 (5) In order to continue to qualify as a group self-insurer  
 35 fund, the group shall continue to meet the minimum requirements as set forth

1 in subdivision (a)(3) of this section or as prescribed by the commission.

2 (b)(1) Except for the initial qualification of the group, a certified  
 3 audited financial statement shall not be required of any member of a group  
 4 either for initial membership or as a condition for continued membership in  
 5 the group;

6 (2) However, each financial statement filed with the commission  
 7 shall be duly certified by the president and treasurer of the member in the  
 8 case of a corporation, and by the owner and general partners, respectively,  
 9 in the case of an individual proprietorship or partnership, to the effect  
 10 that such financial statement is true and correct to the best of the  
 11 knowledge and belief of the officer, individual owner, or partner and truly  
 12 reflects the financial condition of the member.

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

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

21 (e) The commission may suspend or revoke any authorization to a  
 22 self-insurer for a good cause shown after a hearing at which the self-insurer  
 23 shall be entitled to be heard in person or by counsel and to present  
 24 evidence. No suspension or revocation shall affect the liability of any  
 25 self-insurer already incurred.

26 (f) Authorization to write compensation insurance under this chapter  
 27 shall be given to a carrier only after the carrier has received a certificate  
 28 of authority from the State Insurance Commissioner to transact the business  
 29 of workers\_ compensation insurance in Arkansas and the commission has been  
 30 notified in writing of the issuance of the certificate of authority.

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32 SECTION 2. All provisions of this act of a general and permanent  
 33 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
 34 Code Revision Commission shall incorporate the same in the Code.

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1 SECTION 3. If any provision of this act or the application thereof to  
2 any person or circumstance is held invalid, such invalidity shall not affect  
3 other provisions or applications of the act which can be given effect without  
4 the invalid provision or application, and to this end the provisions of this  
5 act are declared to be severable.

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

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