

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

A Bill

SENATE BILL 567

4 By: Senators Mahony and Hardin
5 By: Representative Courtway

For An Act To Be Entitled

8 "AN ACT TO AMEND THE SMALL BUSINESS ENTITY TAX PASS
9 THROUGH ACT AND OTHER ACTS RELATING TO PASS THROUGH
10 ENTITIES, TO ALLOW CONVERSIONS, MERGERS AND CONSOLIDATIONS
11 AND TO CLARIFY CERTAIN OTHER PROVISIONS OF THESE ACTS; AND
12 FOR OTHER PURPOSES."

Subtitle

15 "TO ALLOW CONVERSIONS, MERGERS AND
16 CONSOLIDATIONS AMONG PASS THROUGH
17 ENTITIES AND TO CLARIFY CERTAIN
18 PROVISIONS OF THE ACTS RELATING TO PASS
19 THROUGH ENTITIES."

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

22
23 SECTION 1. Subsection (c)(1) of Arkansas Code §4-32-103 is amended to
24 read as follows:

25 "(c) The provisions of subsection (b) shall not apply if the applicant
26 files with the Secretary of State either of the following:

27 (1) The written consent of the holder of a reserved or
28 registered name to use a deceptively similar name; or"

29
30 SECTION 2. Subsection (c) of Arkansas Code §4-32-1201 is amended to
31 read as follows:

32 "(c) As used in this subchapter, _business entity_ or _business
33 entities_ shall mean domestic and foreign limited liability companies,
34 *corporations, general partnerships, and limited partnerships.*"

35

1 SECTION 3. Subsection (b) of Arkansas Code §4-32-1202
2 is amended to read as follows:

3 "(b) Each business entity that is a party to a proposed merger or
4 consolidation shall approve the merger or consolidation in the manner and by
5 the vote required by the laws applicable to such business entity."
6

7 SECTION 4. Chapter 42 of Title 4 is amended by adding a new
8 subchapter to the end thereof to read as follows:

9 "4-42-801. Conversion of partnership to limited liability company.

10 (a) A partnership may be converted to a limited liability company
11 pursuant to this section.

12 (b) The terms and conditions of a conversion of a partnership to a
13 limited liability company must be approved by all of the partners or by a
14 number or percentage of the partners specified for conversion in the
15 partnership agreement.

16 (c) An agreement of conversion must set forth the terms and conditions
17 of the conversion of the interest of partners of a partnership into interests
18 in the converted limited liability company or the cash or other consideration
19 to be paid or delivered as a result of the conversion of the interests of the
20 partners, or a combination thereof.

21 (d) After a conversion is approved under subsection (b), the
22 partnership shall file articles of organization in the office of the
23 Secretary of State which satisfy the requirements of §4-32-202 and include:

24 (1) A statement that the partnership was converted to a limited
25 liability company from a partnership;

26 (2) Its former name; and

27 (3) A statement of the number of votes cast by the partners
28 entitled to vote for and against the conversion and, if the vote is less than
29 unanimous, the number or percentage required to approve the conversion under
30 subsection (b).

31 (e) A conversion takes effect when the articles of organization are
32 filed in the office of the Secretary of State or at any later date specified
33 in the articles of organization.

34 (f) A general partner who becomes a member of a limited liability
35 company as a result of a conversion remains liable as a partner for any

1 obligation incurred by the partnership before the conversion takes effect.

2 (g) A partner_s liability for all obligations of the limited liability
3 company incurred after the conversion takes effect is that of a member of a
4 limited liability company.

5

6 4-42-802. Effect of conversion; entity unchanged.

7 (a) A partnership that has been converted to a limited liability
8 company is for all purposes, except for any differences caused by being
9 governed under the limited liability company statutes, the same entity that
10 existed before the conversion.

11 (b) When a conversion takes effect:

12 (1) All property owned by the converting partnership is vested
13 in the limited liability company;

14 (2) All debts, liabilities, and other obligations of the
15 converting partnership continue as obligations of the limited liability
16 company;

17 (3) An action or proceeding pending by or against the converting
18 partnership may be continued as if the conversion had not occurred;

19 (4) Except as prohibited by other law, all the rights,
20 privileges, immunities, powers, and purposes of the converting partnership
21 are vested in the limited liability company, and;

22 (5) Except as otherwise provided in the agreement of conversion
23 under §4-42-801(c), all of the partners of the converting partnership
24 continue as members of the limited liability company.

25

26 4-42-803. Merger or consolidation.

27 (a) Unless otherwise provided in writing in a partnership agreement,
28 and subject to any law applicable to business entities other than
29 partnerships, one (1) or more partnerships may merge or consolidate with or
30 into one (1) or more other business entities with the partnership or other
31 business entity as the merger or consolidation agreement shall provide being
32 the surviving or resulting partnership or other business entity.

33 (b) Rights or securities of or interests in a business entity that is
34 a party to the merger or consolidation may be exchanged for or converted into
35 cash, property, obligations, rights or securities of or interests in the

1 surviving or resulting business entity or of any other business entity.

2 (c) As used in this subchapter, _business entity_ or _business
3 entities_ shall mean domestic and foreign limited liability companies.

4

5 4-42-804. Approval of merger or consolidation.

6 (a) Unless otherwise provided in writing in a partnership agreement, a
7 partnership that is a party to a proposed merger or consolidation shall
8 approve the merger or consolidation agreement by the consent of all of the
9 partners.

10 (b) Each business entity that is a party to a proposed merger or
11 consolidation shall approve the merger or consolidation in the manner and by
12 the vote required by the laws applicable to such business entity.

13 (c) Each business entity that is a party to the merger or
14 consolidation shall have such rights to abandon the merger as are provided
15 for in the merger or consolidation agreement or in the laws applicable to the
16 business entity.

17

18 4-42-805. Articles of merger or consolidation.

19 (a) The business entity surviving or resulting from the merger or
20 consolidation shall deliver to the Secretary of State articles of merger or
21 consolidation executed by each constituent entity setting forth:

22 (1) The name and jurisdiction of formation or organization of
23 each business entity which is to merge or consolidate;

24 (2) That an agreement of merger or consolidation has been
25 approved and executed by each business entity which is a party to the merger
26 or consolidation;

27 (3) The name of the surviving or resulting entity;

28 (4) The future effective date of the merger or consolidation
29 (which shall be a date or time certain) if it is not to be effective upon the
30 filing of the articles of merger or consolidation;

31 (5) That the agreement of merger or consolidation is on file at
32 a place of business of the surviving or resulting entity, and the address of
33 that place of business;

34 (6) That a copy of the agreement of merger or consolidation will
35 be furnished by the surviving or resulting business entity, on request and

1 without cost, to any person holding an interest in any business entity which
2 is to merge or consolidate; and

3 (7) If the surviving or resulting entity is not a business
4 entity organized under the laws of this state, a statement that such
5 surviving or resulting business entity:

6 (i) Agrees that it may be served with process in this
7 state in any proceeding for enforcement of any obligation of any business
8 entity party to the merger or consolidation that was organized under the laws
9 of this state, as well as for enforcement of any obligation of the surviving
10 business entity or the new business entity arising from the merger or
11 consolidation; and

12 (ii) Appoints the Secretary of State as its agent for
13 service of process in any such proceeding, and the surviving business entity
14 shall specify the address to which a copy of the process shall be mailed to
15 it by the Secretary of State.

16 (b) A merger or consolidation takes effect upon the later of the
17 effective date of the filing of the articles of merger or consolidation or
18 the date set forth in the articles of merger or consolidation.

19 (c) The articles of merger or consolidation shall be executed by a
20 partnership that is a party to the merger or consolidation, and be filed with
21 the Secretary of State, in the manner provided for by the law applicable to
22 the other business entity to the merger or consolidation.

23 (d) An agreement of merger or consolidation approved in accordance
24 with §4-42-804 may effect any amendment to a partnership agreement or effect
25 the adoption of a new partnership agreement for a partnership if it is the
26 surviving or resulting entity in the merger or consolidation. An approved
27 agreement of merger or consolidation may also provide that the partnership
28 agreement of any constituent partnership to the merger or consolidation
29 (including a partnership formed for the purpose of consummating a merger or
30 consolidation) shall be the agreement of the surviving or resulting entity.
31 Any amendment to a partnership agreement or adoption of a new agreement made
32 pursuant to this subsection (d) shall be effective at the time or date of the
33 merger or consolidation. The provisions of this subsection shall not be
34 construed to limit the accomplishment of a merger or of any of the matters
35 referred to herein by any other means provided for in a partnership agreement

1 or other agreement or as otherwise permitted by law.

2

3 4-42-806. Effects of merger or consolidation.

4 A merger or consolidation has the following effects:

5 (a) The business entities that are parties to the merger or
6 consolidation agreement shall become a single entity, which, in the case of a
7 merger, shall be the entity designated in the plan of merger as the surviving
8 entity, and, in the case of a consolidation, shall be the new entity provided
9 for in the plan of consolidation;

10 (b) Each party to the merger or consolidation agreement, except the
11 surviving entity or the new entity, shall cease to exist;

12 (c) The surviving entity or the new entity shall thereupon and
13 thereafter possess all the rights, privileges, immunities, and powers of each
14 constituent entity and shall be subject to all the restrictions, disabilities
15 and duties of each of the constituent entities to the extent such rights,
16 privileges, immunities, powers, franchises, restrictions, disabilities and
17 duties are applicable to the type of business entity that is the surviving
18 entity or the new entity;

19 (d) All property, real, personal and mixed, and all debts due
20 on whatever account, including promises to make capital contributions and
21 subscriptions for shares, and all other choses in action, and all and every
22 other interest of or belonging to or due to each of the constituent entities
23 shall be vested in the surviving entity or the new entity without further act
24 or deed;

25 (e) The title to all real estate and any interest therein vested in
26 any such constituent entity shall not revert or be in any way impaired by
27 reason of such merger or consolidation;

28 (f) The surviving entity of the new entity shall thenceforth be liable
29 for all liabilities of each of the constituent entities so merged or
30 consolidated, and any claim existing or action or proceeding pending by or
31 against any such constituent entity may be prosecuted as if such merger or
32 consolidation had not taken place, or the surviving entity or the new entity
33 may be substituted in the action;

34 (g) Neither the rights of the creditors nor any liens on the property
35 of any constituent entity shall be impaired by the merger or consolidation;

1 (h) The interests in a partnership that are to be converted or
2 exchanged into interests, shares or other securities, cash, obligations or
3 other property under the terms of the merger or consolidation agreement are so
4 converted, and the former holders thereof are entitled only to the rights
5 provided in the merger or consolidation agreement or the rights otherwise
6 provided by law."

7

8 SECTION 5. Chapter 43, Title 4 of Arkansas Code is amended by adding a
9 new subchapter 12 to read as follows:

10 "4-43-1201. Conversion of limited partnership to limited liability
11 company.

12 (a) A limited partnership may be converted to a limited liability
13 company pursuant to this section.

14 (b) The terms and conditions of a conversion of a limited partnership
15 to a limited liability company must be approved by all of the partners, or by
16 a number or percentage of the partners specified for conversion in the
17 partnership agreement.

18 (c) An agreement of conversion must set forth the terms and conditions
19 of the conversion of the interests of partners of a limited partnership into
20 interests in the converted limited liability company or the cash or other
21 consideration to be paid or delivered as a result of the conversion of the
22 interests of the partners, or a combination thereof.

23 (d) After a conversion is approved under subsection (b), the limited
24 partnership shall file articles of organization in the office of the
25 Secretary of State which satisfy the requirements of §4-32-202 and include:

26 (1) A statement that the limited partnership was converted to a
27 limited liability company from a limited partnership;

28 (2) Its former name;

29 (3) A statement of the number of votes cast by the partners
30 entitled to vote for and against the conversion and, if the vote is less than
31 unanimous, the number or percentage required to approve the conversion under
32 subsection (b); and

33 (4) A statement that the certificate of limited partnership is
34 canceled.

35 (e) The filing of articles of organization under subsection (d)

1 cancels the certificate of limited partnership as of the date on which the
2 conversion takes effect.

3 (f) A conversion takes effect when the articles of organization are
4 filed in the office of the Secretary of State or at any later date specified
5 in the articles of organization.

6 (g) A general partner who becomes a member of a limited liability
7 company as a result of a conversion remains liable as a partner for any
8 obligation incurred by the limited partnership before the conversion takes
9 effect.

10 (h) A partner's liability for all obligations of the limited liability
11 company incurred after the conversion takes effect is that of a member of a
12 limited liability company. A limited partner who becomes a member as a
13 result of a conversion remains liable only to the extent the limited partner
14 was liable for an obligation incurred by the limited partnership before the
15 conversion takes effect.

16

17 4-43-1202. Effect of conversion; entity unchanged.

18 (a) A limited partnership that has been converted to a limited
19 liability company is for all purposes, except for any differences caused by
20 being governed under the limited liability company statutes, the same entity
21 that existed before the conversion.

22 (b) When a conversion takes effect:

23 (1) All property owned by the converting limited partnership is
24 vested in the limited liability company;

25 (2) All debts, liabilities, and other obligations of the
26 converting limited partnership continue as obligations of the limited
27 liability company;

28 (3) An action or proceeding pending by or against the converting
29 limited partnership may be continued as if the conversion had not occurred;

30 (4) Except as prohibited by other law, all the rights,
31 privileges, immunities, powers, and purposes of the converting limited
32 partnership are vested in the limited liability company; and

33 (5) Except as otherwise provided in the agreement of conversion
34 under §4-43-1201(c), all of the partners of the converting limited
35 partnership continue as members of the limited liability company.

1

2 4-43-1203. Merger or consolidation.

3 (a) Unless otherwise provided in writing in a partnership agreement,
4 and subject to any law applicable to business entities other than limited
5 partnerships, one (1) or more limited partnerships may merge or consolidate
6 with or into one (1) or more other business entities with the limited
7 partnership or other business entity as the merger or consolidation agreement
8 shall provide being the surviving or resulting limited partnership or other
9 business entity.

10 (b) Rights or securities of or interests in a business entity that is
11 a party to the merger or consolidation may be exchanged for or converted into
12 cash, property, obligations, rights or securities of or interests in the
13 surviving or resulting business entity or of any other business entity.

14 (c) As used in this subchapter, _business entity_ or _business
15 entities_ shall mean domestic and foreign limited liability companies.

16

17 4-43-1204. Approval of merger or consolidation.

18 (a) Unless otherwise provided in writing in a partnership agreement, a
19 limited partnership that is a party to a proposed merger or consolidation
20 shall approve the merger or consolidation agreement by the consent of all of
21 the partners.

22 (b) Each business entity that is a party to a proposed merger or
23 consolidation shall approve the merger or consolidation in the manner and by
24 the vote required by the laws applicable to such business entity.

25 (c) Each business entity that is a party to the merger or
26 consolidation shall have such rights to abandon the merger as are provided
27 for in the merger or consolidation agreement or in the laws applicable to the
28 business entity.

29

30 4-43-1205. Articles of merger or consolidation.

31 (a) The business entity surviving or resulting from the merger or
32 consolidation shall deliver to the Secretary of State articles of merger or
33 consolidation executed by each constituent entity setting forth:

34 (1) The name and jurisdiction of formation or organization of
35 each business entity which is to merge or consolidate;

1 (2) That an agreement of merger or consolidation has been
2 approved and executed by each business entity which is a party to the merger
3 or consolidation;

4 (3) The name of the surviving or resulting entity;

5 (4) The future effective date of the merger or consolidation
6 (which shall be a date or time certain) if it is not to be effective upon the
7 filing of the articles of merger or consolidation;

8 (5) That the agreement of merger or consolidation is on file at
9 a place of business of the surviving or resulting entity, and the address of
10 that place of business;

11 (6) That a copy of the agreement of merger or consolidation will
12 be furnished by the surviving or resulting business entity, on request and
13 without cost, to any person holding an interest in any business entity which
14 is to merge or consolidate; and

15 (7) If the surviving or resulting entity is not a business
16 entity organized under the laws of this state, a statement that such
17 surviving or resulting business entity:

18 (i) Agrees that it may be served with process in this
19 state in any proceeding for enforcement of any obligation of any business
20 entity party to the merger or consolidation that was organized under the laws
21 of this state, as well as for enforcement of any obligation of the surviving
22 business entity or the new business entity arising from the merger or
23 consolidation; and

24 (ii) Appoints the Secretary of State as its agent for
25 service of process in any such proceeding, and the surviving business entity
26 shall specify the address to which a copy of the process shall be mailed to
27 it by the Secretary of State.

28 (b) A merger or consolidation takes effect upon the later of the
29 effective date of the filing of the articles of merger or consolidation or
30 the date set forth in the articles of merger or consolidation.

31 (c) The articles of merger or consolidation shall be executed by a
32 limited partnership that is a party to the merger or consolidation in the
33 manner provided for in §4-43-204, and shall be filed with the Secretary of
34 State in the manner provided for in §4-43-206.

35 (d) Articles of merger or consolidation shall constitute articles of

1 dissolution for a limited partnership which is not the surviving or resulting
2 business entity in the merger or consolidation.

3 (e) An agreement of merger or consolidation approved in accordance
4 with §4-43-1204 may effect any amendment to a partnership agreement or effect
5 the adoption of a new partnership agreement for a limited partnership if it
6 is the surviving or resulting entity in the merger or consolidation. An
7 approved agreement of merger or consolidation may also provide that the
8 partnership agreement of any constituent limited partnership to the merger or
9 consolidation (including a limited partnership formed for the purpose of
10 consummating a merger or consolidation) shall be the agreement of the
11 surviving or resulting entity. Any amendment to a partnership agreement or
12 adoption of a new agreement made pursuant to this subsection (e) shall be
13 effective at the time or date of the merger or consolidation. The provisions
14 of this subsection shall not be construed to limit the accomplishment of a
15 merger or of any of the matters referred to herein by any other means
16 provided for in a partnership agreement or other agreement or as otherwise
17 permitted by law.

18

19 4-43-1206. Effects of merger or consolidation.

20 A merger or consolidation has the following effects:

21 (a) The business entities that are parties to the merger or
22 consolidation agreement shall become a single entity, which, in the case of a
23 merger, shall be the entity designated in the plan of merger as the surviving
24 entity, and, in the case of a consolidation, shall be the new entity provided
25 for in the plan of consolidation;

26 (b) Each party to the merger or consolidation agreement, except the
27 surviving entity or the new entity, shall cease to exist;

28 (c) The surviving entity or the new entity shall thereupon and
29 thereafter possess all the rights, privileges, immunities, and powers of each
30 constituent entity and shall be subject to all the restrictions, disabilities
31 and duties of each of the constituent entities to the extent such rights,
32 privileges, immunities, powers, franchises, restrictions, disabilities and
33 duties are applicable to the type of business entity that is the surviving
34 entity or the new entity;

35 (d) All property, real, personal and mixed, and all debts due

1 on whatever account, including promises to make capital contributions and
2 subscriptions for shares, and all other choses in action, and all and every
3 other interest of or belonging to or due to each of the constituent entities
4 shall be vested in the surviving entity or the new entity without further act
5 or deed;

6 (e) The title to all real estate and any interest therein vested in
7 any such constituent entity shall not revert or be in any way impaired by
8 reason of such merger or consolidation;

9 (f) The surviving entity or the new entity shall thenceforth be liable
10 for all liabilities of each of the constituent entities so merged or
11 consolidated, and any claim existing or action or proceeding pending by or
12 against any such constituent entity may be prosecuted as if such merger or
13 consolidation had not taken place, or the surviving entity or the new entity
14 may be substituted in the action;

15 (g) Neither the rights of the creditors nor any liens on the property
16 of any constituent entity shall be impaired by the merger or consolidations;

17 (h) The interests in a limited partnership that are to be converted or
18 exchanged into interests, shares or other securities, cash, obligations or
19 other property under the terms of the merger or consolidation agreement are so
20 converted, and the former holders thereof are entitled only to the rights
21 provided in the merger or consolidation agreement or the rights otherwise
22 provided by law."

23

24 SECTION 6. Arkansas Code §4-32-401 is hereby amended to read as
25 follows:

26 "4-32-401. Management.

27 (a) With respect to persons other than members, management of the
28 affairs of the limited liability company shall be governed by § 4-32-301.

29 (b) Unless otherwise provided in an operating agreement, with respect
30 to members, management of the affairs of the limited liability company shall
31 be governed by § 4-32-301.

32 (c) Unless otherwise provided in an operating agreement, managers:

33 (1) Shall be designated, appointed, elected, removed or replaced
34 by a vote, approval or consent of more than one half (1/2) by number of the
35 members;

1 (2) Need not be members of the limited liability company or
2 natural persons; and

3 (3) Unless they are sooner removed or sooner resign, shall hold
4 office until their successors shall have been elected and qualified."
5

6 SECTION 7. Arkansas Code §4-70-201 is amended to read as follows:

7 "§4-70-201. Applicability of subchapter.

8 (a) This subchapter shall not apply to any limited partnership which
9 has filed its certificate of limited partnership with the Secretary of State
10 pursuant to §4-44-102 [Repealed].

11 (b) This subchapter shall not apply to any domestic or foreign
12 corporation lawfully doing business in this state.

13 (c) This subchapter shall not apply to any limited partnership which
14 has filed its certificate of limited partnership with the Secretary of State
15 pursuant to §4-43-201.

16 (d) This subchapter shall not apply to any limited liability company
17 which has filed its articles of organization with the Secretary of State
18 pursuant to §4-32-202."
19

20 SECTION 8. Arkansas Code §11-9-102 is amended to read as follows:

21 "§11-9-102. Definitions.

22 As used in this chapter, unless the context otherwise requires:

23 (1) Carrier means any stock company, mutual company, or reciprocal
24 or interinsurance exchange authorized to write or carry on the business of
25 workers' compensation insurance in this state; whenever required by the
26 context, the term carrier shall be deemed to include duly qualified
27 self-insureds or self-insured groups;

28 (2) Child means a natural child, a posthumous child, a child legally
29 adopted prior to injury of the employee, a stepchild, an acknowledged
30 illegitimate child of the deceased or of the spouse of the deceased, and a
31 foster child;

32 (3) Commission means the Workers' Compensation Commission;

33 (4) Insurance Commissioner means the Insurance Commissioner of the
34 State of Arkansas;

35 (5)(A) Compensable injury means:

1 (i) An accidental injury causing internal or external
2 physical harm to the body or accidental injury to prosthetic appliances,
3 including eyeglasses, contact lenses, or hearing aids, arising out of and in
4 the course of employment and which requires medical services or results in
5 disability or death. An injury is accidental only if it is caused by a
6 specific incident and is identifiable by time and place of occurrence;

7 (ii) An injury causing internal or external physical harm
8 to the body and arising out of and in the course of employment if it is not
9 caused by a specific incident or is not identifiable by time and place of
10 occurrence, if the injury is:

11 (a) Caused by rapid repetitive motion. Carpal
12 tunnel syndrome is specifically categorized as a compensable injury falling
13 within this definition;

14 (b) A back injury which is not caused by a specific
15 incident or which is not identifiable by time and place of occurrence;

16 (c) Hearing loss which is not caused by a specific
17 incident or which is not identifiable by time and place of occurrence;

18 (iii) Mental illness as set out in §11-9-113;

19 (iv) Heart, cardiovascular injury, accident, or disease as
20 set out in §11-9-114;

21 (v) A hernia as set out in §11-9-523.

22 (B) Compensable injury does not include:

23 (i) Injury to any active participant in assaults or
24 combats which, although they may occur in the workplace, are the result of
25 nonemployment-related hostility or animus of one, both, or all of the
26 combatants, and which said assault or combat amounts to a deviation from
27 customary duties; further, except for innocent victims, injuries caused by
28 horseplay shall not be considered to be compensable injuries;

29 (ii) Injury incurred while engaging in or performing, or
30 as the result of engaging in or performing, any recreational or social
31 activities for the employee's personal pleasure;

32 (iii) Injury which was inflicted upon the employee at a
33 time when employment services were not being performed, or before the
34 employee was hired or after the employment relationship was terminated;

35 (iv) Injury where the accident was substantially

1 occasioned by the use of alcohol, illegal drugs, or prescription drugs used
2 in contravention of physician's orders. The presence of alcohol, illegal
3 drugs, or prescription drugs used in contravention of a physician's orders
4 shall create a rebuttable presumption that the injury or accident was
5 substantially occasioned by the use of alcohol, illegal drugs, or
6 prescription drugs used in contravention of physician's orders. Every
7 employee is deemed by his performance of services to have impliedly consented
8 to reasonable and responsible testing by properly trained medical or law
9 enforcement personnel for the presence of any of the aforementioned
10 substances in the employee's body. An employee shall not be entitled to
11 compensation unless it is proved by a preponderance of the evidence that the
12 alcohol, illegal drugs, or prescription drugs utilized in contravention of
13 the physician's orders did not substantially occasion the injury or accident.

14 (C) The definition of compensable injury as set forth
15 hereinabove shall not be deemed to limit or abrogate the right to recover for
16 mental injuries as set forth in §11-9-113 or occupational diseases as
17 hereinafter set forth in §11-9-601 et seq.

18 (D) A compensable injury must be established by medical
19 evidence, supported by objective findings as defined in §11-9-102(16).

20 (E) Burden of proof. The burden of proof of a compensable injury
21 shall be on the employee and shall be as follows:

22 (i) For injuries falling within the definition of
23 compensable injury under subdivision (5)(A)(i) of this section, the burden of
24 proof shall be a preponderance of the evidence;

25 (ii) For injuries falling within the definition of
26 compensable injury under subdivision (5)(A)(ii) of this section, the burden
27 of proof shall be by a preponderance of the evidence, and the resultant
28 condition is compensable only if the alleged compensable injury is the major
29 cause of the disability or need for treatment.

30 (F) Benefits.

31 (i) When an employee is determined to have a compensable
32 injury, the employee is entitled to medical and temporary disability as
33 provided by this chapter.

34 (ii) Permanent benefits shall be awarded only upon a
35 determination that the compensable injury was the major cause of the

1 disability or impairment. If any compensable injury combines with a
2 preexisting disease or condition or the natural process of aging to cause or
3 prolong disability or a need for treatment, permanent benefits shall be
4 payable for the resultant condition only if the compensable injury is the
5 major cause of the permanent disability or need for treatment.

6 (iii) Under subdivision (5)(F) of this section, benefits
7 shall not be payable for a condition which results from a nonwork-related
8 independent intervening cause following a compensable injury which causes or
9 prolongs disability or a need for treatment. A nonwork-related independent
10 intervening cause does not require negligence or recklessness on the part of
11 a claimant.

12 (iv) Nothing in this section shall limit the payment of
13 rehabilitation benefits or benefits for disfigurement as set forth in this
14 chapter;

15 (6) Compensation means the money allowance payable to the employee
16 or to his dependents and includes the allowances provided for in §11-9-509
17 and funeral expense;

18 (7) Death means only death resulting from compensable injury as
19 defined in subdivision (5) of this section;

20 (8) Department means the State Insurance Department;

21 (9) Disability means incapacity because of compensable injury to
22 earn, in the same or any other employment, the wages which the employee was
23 receiving at the time of the compensable injury;

24 (10) Employee means any person, including a minor, whether lawfully
25 or unlawfully employed in the service of an employer under any contract of
26 hire or apprenticeship, written or oral, expressed or implied; but excluding
27 one whose employment is casual and not in the course of the trade, business,
28 profession, or occupation of his employer, and excluding one who is required
29 to perform work for a municipality, county, or the state or federal
30 government upon being convicted of a criminal offense or while incarcerated.

31 The term employee shall also include a sole proprietor, a partner or a
32 member who devotes full time to the proprietorship, partnership or limited
33 liability company. Further, however, it is to be understood that any sole
34 proprietor, partner of a partnership or member of a limited liability company
35 who desires not to be included in the definition of employee may file for and

1 receive a certification of noncoverage under this chapter from the commission
2 and thereafter, or until he elects otherwise, be conclusively presumed not to
3 be an employee for purposes of this chapter. No election by a sole
4 proprietor, partnership, or limited liability company under this subdivision
5 shall affect the rights or the coverage under this chapter of any employees
6 of those sole proprietors, partners or members. Any reference to an employee
7 who has been injured, when that employee is dead, shall also include his
8 legal representative, dependents, and other persons to whom compensation may
9 be payable;

10 (11) Employer means any individual, partnership, limited liability
11 company, association, or corporation carrying on any employment, the receiver
12 or trustee of the same, or the legal representative of a deceased employer;

13 (12) Employment means:

14 (A) Every employment in the state in which three (3) or more
15 employees are regularly employed by the same employer in the course of
16 business, except:

17 (i) An employee employed as a domestic servant in or about
18 a private home;

19 (ii) An employee employed to do gardening, maintenance,
20 repair, remodeling, or similar work in or about the private home of the
21 person employing the employee;

22 (iii) Agricultural farm labor;

23 (iv) The State of Arkansas and each of the political
24 subdivisions thereof, except as provided by §§6-17-1401 - 6-17-1405,
25 14-26-101 - 14-26-104, 14-60-101 - 14-60-104, 19-10-101 - 19-10-103,
26 19-10-202 - 19-10-210, 19-10-401 - 19-10-406, and 21-5-601 - 21-5-610;

27 (v) A person for whom a rule of liability for injury or
28 death arising out of and in the course of employment is provided by the laws
29 of the United States;

30 (vi) A person performing services for any nonprofit
31 religious, charitable, or relief organization;

32 (vii) Any person engaged in the vending, selling, offering
33 for sale, or delivery directly to the general public of any newspapers,
34 magazines, or periodicals, or any person acting as sales agent or distributor
35 as an independent contractor of or for any newspaper, magazine, or

1 periodical; (B) Every employment in which two (2) or more
2 employees are employed by any person engaged in building or building repair
3 work;

4 (C) Every employment in which one (1) or more employees are
5 employed by a contractor who subcontracts any part of his contract;

6 (D) Every employment in which one (1) or more employees are
7 employed by a subcontractor;

8 (13) Healing period means that period for healing of an injury
9 resulting from an accident;

10 (14) Major cause means more than fifty percent (50%) of the cause. A
11 finding of major cause shall be established according to the preponderance of
12 the evidence;

13 (15) Medical services means those services specified in §11-9-508;

14 (16) Objective findings are those findings which cannot come under
15 the voluntary control of the patient. When determining physical or
16 anatomical impairment, neither a physician, any other medical provider, an
17 administrative law judge, the Workers' Compensation Commission, nor the
18 courts may consider complaints of pain; for the purpose of making physical or
19 anatomical impairment ratings to the spine, straight-leg raising tests or
20 range-of-motion tests shall not be considered objective findings. Medical
21 opinions addressing compensability and permanent impairment must be stated
22 within a reasonable degree of medical certainty;

23 (17) State average weekly wage means the state average weekly wage
24 determined annually by the Director of the Department of Labor in the
25 preceding calendar year, pursuant to §11-10-502. If, for any reason, the
26 determination is not available, the commission shall determine the wage
27 annually, after reasonable investigation and public hearing;

28 (18) Time of accident or date of accident means the time or date
29 of the occurrence of the accidental incident from which compensable injury,
30 disability, or death results;

31 (19) Wages means the money rate at which the service rendered is
32 recompensed under the contract of hiring in force at the time of the
33 accident, including reasonable value of board, rent, housing, lodging, or
34 similar advantage received from the employer, and includes the amount of tips
35 required to be reported by the employer pursuant to Section 6053 of the

1 Internal Revenue Code of 1954, as amended, and the regulations promulgated
2 pursuant thereto, or the amount of actual tips reported, whichever amount is
3 greater;

4 (20) Widow shall include only the decedent's legal wife, living with
5 or dependent for support upon him at the time of his death;

6 (21) Widower shall include only the decedent's legal husband, living
7 with or dependent for support upon her at the time of her death."

8

9 SECTION 9. All provisions of this act of a general and permanent
10 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
11 Code Revision Commission shall incorporate the same in the Code.

12

13 SECTION 10. If any provision of this act or the application thereof to
14 any person or circumstance is held invalid, such invalidity shall not affect
15 other provisions or applications of the act which can be given effect without
16 the invalid provision or application, and to this end the provisions of this
17 act are declared to be severable.

18

19 SECTION 11. All laws and parts of laws in conflict with this act are
20 hereby repealed.

21

22 SECTION 12. Emergency. It is hereby found and determined by the
23 General Assembly of the State of Arkansas that the limited liability company
24 statute and other acts relating to pass through entities and related laws need
25 amending in order to better reflect the intent and operation of those laws as
26 originally drafted and to be consistent with current trends. Therefore, an
27 emergency is hereby declared to exist and this Act being immediately
28 necessary for the immediate preservation of the public peace, health, and
29 safety, shall be in full force and effect from and after its passage and
30 approval.

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32 */s/Mahony et al*

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