

1 State of Arkansas
2 81st General Assembly
3 Regular Session, 1997

As Engrossed: S3/19/97

A Bill

SENATE BILL 636

4
5 By: Senator Bradford
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For An Act To Be Entitled

8
9 "AN ACT TO AMEND ARKANSAS CODE 23-67-304 PERTAINING TO THE
10 ARKANSAS WORKERS COMPENSATION INSURANCE PLAN; TO PROMOTE
11 COMPETITION FOR THE DESIGNATION OF PLAN ADMINISTRATOR AND
12 SERVICING CARRIER; TO AMEND UNCODIFIED ACT 1155 OF 1993
13 PERTAINING TO THE IMPROVEMENT OF THE PLAN ADMINISTRATION
14 AND SERVICING CARRIER PERFORMANCE; AND FOR OTHER
15 PURPOSES."

Subtitle

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18 "AN ACT TO AMEND ARKANSAS CODE 23-67-304
19 PERTAINING TO THE ARKANSAS WORKERS
20 COMPENSATION INSURANCE PLAN; AND FOR
21 OTHER PURPOSES."

22
23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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25 SECTION 1. Arkansas Code 23-67-304 is amended to read:
26 "23-67-304. Plan for coverage.

27 (a) The Arkansas Workers' Compensation Insurance Plan shall give
28 consideration to:

- 29 (1) The need for adequate and readily accessible coverage;
30 (2) Optional methods of improving the market affected;
31 (3) The need for reasonable underwriting standards;
32 (4) The need for adequate supervisory and servicing procedures to
33 ensure proper operation of the Plan;
34 (5) The need to establish procedures that will have minimum
35 interference with the voluntary market;
36 (6) Distributing the obligations imposed by the Plan and any

1 profits or losses experienced by the Plan equitably and efficiently among the
2 participating insurers; and

3 (7) Establishing procedures for applicants and participants to
4 have their grievances reviewed and resolved.

5 (b) The Plan shall provide for the issuance of a policy covering the
6 entire liability of the employer as to the business for which workers'
7 compensation insurance has been rejected. Nothing in this paragraph (b) shall
8 modify or repeal the provisions of Arkansas Code 23-92-315(3).

9 (c) The rates and supplementary rate information of the Arkansas
10 Workers' Compensation Insurance Plan shall meet the standards specified in
11 §23-67-108.

12 (d) The Plan may obtain reinsurance for any part or all of its risks.

13 (e)(1) The commissioner, at his discretion, is authorized to delegate
14 all, or any part of the commissioner's responsibility to establish and operate
15 the Plan; provided however, that any such Plan, or plan of operation, and any
16 amendments thereto must receive the prior approval of the commissioner.

17 (2) Any person or entity to whom the establishment,
18 implementation, or operation of the Plan is delegated pursuant to this
19 subsection shall file with and obtain the approval of the commissioner as to
20 all policy forms, rates, or supplementary rate information necessary to
21 effectuate the Plan.

22 (3)(A) In delegating all or part of the commissioner's
23 responsibility, the commissioner shall not approve any Plan or filing that
24 abrogates or restricts his authority to select the Plan administrator or
25 servicing carriers.

26 (B) The commissioner shall competitively select the
27 organization or organizations to whom the responsibility of Plan administrator
28 shall be delegated.

29 (C) If the administration of the Plan is delegated, the Plan
30 administrator or administrators shall have an office in Arkansas adequately
31 staffed, outfitted and maintained to provide the Plan services delegated.

32 (D) The commissioner shall specify duties and functions of
33 Plan administrators and may structure and delegate administrative functions
34 separately such as, but not limited to, rates, forms and statistics for the
35 best operation of the Plan.

36 (4) Under the provisions of this subsection, the commissioner

1 shall vigorously promote competition for the designation of Plan administrator
2 and servicing carrier for the most effective operation of the Plan.

3 (5) The office in Arkansas is established to improve services
4 provided by the Plan, to promote and secure courteous and timely service, and
5 to assure that the minimum standards as provided under subsection (f)(2) are
6 met. The office in Arkansas shall also assist employers or agents with
7 questions, problems or complaints pertaining to the servicing carriers, and
8 secure and expedite prompt and fair treatment to employers for servicing
9 carrier errors and service failures.

10 (6) The Arkansas office manager shall have the authority to
11 intervene with servicing carriers to secure an adequate level of service and
12 prevent servicing carriers from imposing unreasonable demands or actions. The
13 office manager shall keep a record of all employer or agent problems and
14 complaints by servicing carrier, including a description of the problem. This
15 record shall be provided to the commissioner within sixty (60) days of each
16 calendar year or upon request of the commissioner. The manager shall promptly
17 notify the commissioner of any problems upon a request by an employer.

18 (f)(1)(A) In order to promote competition and improve servicing carrier
19 performance, the commissioner shall competitively select those servicing
20 carriers who shall serve the Arkansas Workers Compensation Insurance Plan.

21 (B) Any insurer licensed to transact workers compensation and
22 employers liability insurance in Arkansas may apply for selection as a
23 servicing carrier, but if an adequate number of qualified insurers do not
24 apply, the commissioner may appoint any such insurer, as needed, to serve as a
25 servicing carrier.

26 (2) All servicing carriers shall be subject to the following
27 minimum standards.

28 (A) Each insurer shall continually employ such number of
29 qualified administrative personnel and dedicate such equipment and facilities
30 to the administration of the Arkansas Workers Compensation Insurance Plan as
31 the commissioner, in his reasonable discretion, deems adequate to service the
32 needs of the Plan;

33 (B) Each such insurer shall comply with the following
34 specific service or performance standards and such further standards as the
35 commissioner may by rule and regulation provide:

36 (i) Provide a level of service comparable to that

1 provided to employer-insureds in its voluntary workers compensation line of
2 business, and assure same by putting into effect internal administrative
3 procedures which shall assure that such is the case;

4 (ii) Maintain with the commissioner a list of
5 responsible management personnel of the insurer qualified to make
6 administrative decisions on the insurer's behalf concerning policies issued
7 within the Plan;

8 (iii) Keep the commissioner continually advised of the
9 address and telephone number of the insurer's office servicing the Plan on its
10 behalf;

11 (iv) Maintain a toll-free telephone number or numbers
12 adequate to service the Plan and keep the commissioner, employers, and agents
13 continually apprised of same;

14 (v) Maintain its billing and rating procedure in
15 timely compliance with Orders of the commissioner; and, in particular, no such
16 insurer shall ever purport to effect a retroactive rate adjustment based upon
17 a succeeding rate filing unless such insurer has specifically included within
18 its policies a specific notice of pending rate change; and further, no such
19 insurer shall fail to physically implement any rate change later than sixty
20 (60) days of the date the Order effecting the change is entered; and

21 (vi) Such other service or performance standards
22 including, but not limited to, matters relating to loss experience, safety and
23 loss control success, and profitability as the commissioner shall by rule and
24 regulation prescribe; and

25 (vii) Such further standards as the commissioner may
26 by rule and regulation provide.

27 (g) The commissioner is hereby vested with the power and the reasonable
28 discretion, after notice and hearing, to impose upon any servicing carrier not
29 meeting the standards herein prescribed or set forth by rule and regulation an
30 administrative fine or penalty in the sum of not more than One Thousand
31 Dollars (\$1,000.00) for each such violation of standard. The commissioner
32 shall use this authority to discourage unreasonable or unfair actions by the
33 servicing carriers.

34 (h) The commissioner shall in considering performance of servicing
35 carriers require the Plan administrator to:

36 (1) File with the Insurance Department quarterly results of the

1 Plan, including, but not limited to, premiums written and earned, losses paid,
2 incurred losses, administration and servicing carrier allowances; and

3 (2) File with the Insurance Department annually the performance
4 review and Plan results of each Arkansas Plan servicing carrier.

5 (i)(1) Servicing carriers may join cooperatively with other licensed
6 insurers or general business corporations for the purpose of satisfying their
7 duties as servicing carriers, including but not limited to claim review and
8 payment, loss control and safety functions.

9 (2) The commissioner shall actively encourage additional
10 financially sound licensed carriers or combinations of licensed carriers to
11 join together as joint venturers with shared responsibilities for servicing
12 functions and, also, to utilize the services of such claim, safety, and other
13 service organizations as reasonably necessary to provide the best servicing
14 carrier service economically possible.

15 (j) The commissioner shall establish within the Arkansas Workers
16 Compensation Insurance Plan an Alternate Preferred Plan for employers who have
17 carried workers compensation insurance continually for at least four policy
18 years and who have had better than average loss experience and meet such
19 additional reasonable standards as the commissioner shall by rule and
20 regulation prescribe.

21 (k)(1) The commissioner shall by rule and regulation establish a
22 performance plan related to the aforementioned service or performance
23 standards and others to be promulgated with incentives and penalties to
24 improve servicing carrier performance.

25 (2) The performance plan shall provide for up to thirty-three
26 percent (33%) of the servicing carrier's remuneration to be based on
27 performance.

28 (3) The servicing carrier performance plan shall provide an annual
29 basis for penalties on carriers performing below standard to the extent of
30 their under-performance under the criteria as hereinafter established by rule
31 and regulation up to ~~to~~ thirty-three percent (33%) of their remuneration.

32 (4) These penalties shall be distributed as incentives to carriers
33 performing at or above standard up to their thirty-three percent (33%) of
34 their remuneration.

35 (5)(A) The commissioner shall conduct a performance review on the
36 Plan administration and each servicing carrier promptly after the end of each

1 ~~calender~~ calendar year.

2 (B) This performance review ~~should~~ may be conducted
3 ~~independently of any performed by an organization owned or controlled by~~
4 ~~insurance carriers.~~ by the commissioner to the extent deemed necessary for the
5 proper operation of the Plan. The commissioner shall conduct a comprehensive
6 performance review of the Plan administrator and each servicing carrier within
7 the first half of the third year of any Plan administrator or servicing
8 carrier competitive selection period. This comprehensive performance review
9 shall be conducted independently of any other performance review conducted by
10 an organization owned or controlled by the insurance carriers.

11 (C) A report of this review and action taken to improve Plan
12 performance shall be made to the ~~General Assembly~~ Legislative Council and the
13 House and Senate Interim Committees on Insurance and Commerce no later than
14 ~~June 30~~ September 1 after the calendar year reviewed. ~~The first review and~~
15 ~~imposition of incentives and penalties shall be for calendar year 1994~~
16 ~~operation, but may be sooner if the commissioner elects.~~ "

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18 SECTION 2. SECTION 3 of Uncodified Act 1155 of 1993 is amended to read
19 as follows:

20 "Section 3. ~~(A)~~ (a) The commissioner shall make a good faith effort to
21 comply with the intent of the provisions requiring competitive selection of
22 the Plan ~~Administrator~~ administrator and servicing carriers ~~by January 1,~~
23 ~~1994.~~ The Plan administrator and servicing carriers shall be competitively
24 selected no less often than every three (3) years. Consideration for the Plan
25 administrator and servicing carriers shall include cost, finances, operating
26 and service capabilities, and the record of service and other factors deemed
27 necessary for the effective and proper operation of the Plan. The
28 commissioner may suspend ~~implementing this part of requirements until July 1,~~
29 ~~1995~~ formal bidding for the Plan administrator provided that:

30 (1) The commissioner has sought and compared other administrative
31 services available;

32 (2) The commissioner deems there to have been in the interim a
33 satisfactory improvement in Plan administrator and servicing carrier
34 performance; ~~and~~

35 (3) The commissioner judges continuation of present Plan
36 administrator ~~and servicing carriers~~ subject to the modifications herein set

1 forth and to hereafter be promulgated by rule and regulation to be in the best
2 interests of Arkansas-;

3 (4) Coverage and service is adequately and properly provided to
4 Arkansas employers entitled to insurance, and coverage is provided in other
5 states for employees of Arkansas employers to the extent possible and the
6 proper coverage is in the best interests of the employers and Plan operations.
7 Adequate coverage of employees while working on a temporary or occasional
8 basis in other states is essential to Arkansas employers and employees; and

9 (5) The Plan administrator has an office in Arkansas and the
10 office has the staff and authority necessary to properly serve Arkansas
11 employers and the commissioner in accordance with the provisions of this act.

12 ~~(B) The provision that Plan administrator have an office in Arkansas~~
13 ~~providing services delegated shall be implemented by January 1, 1994.~~

14 ~~(C) All other provisions of this act shall be effective September 1,~~
15 ~~1993.~~

16 (b) The commissioner shall review the Plan operations to ensure
17 compliance with this act. The commissioner shall review and report to the
18 Legislative Council and the Senate and House Interim Committees on Insurance
19 and Commerce by September 1 of each year, with the first report to be
20 submitted no later than September 1, 1997, including, but not limited to the
21 following information:

22 (1) Competitive selection of the Plan administrator and servicing
23 carriers;

24 (2) Plan operating performance and service in accordance with the
25 intent of this act, including performance reviews of the Plan administrator,
26 servicing carriers, and plan regulations;

27 (3) Proper authority and independence of the Arkansas office to
28 properly perform and secure prompt, fair, and reasonable service as required
29 by this act; and

30 (4) Coverage provided by the Plan in other states. Evidence
31 providing that carriers promptly provide coverage for employees of Arkansas
32 employers working in other states as provided in this act.

33 (c) The commissioner is encouraged to hold public hearings as needed to
34 assist in achieving the objectives of the act and to assist with the review
35 and report provided to the Legislative Council and the Senate and House
36 Interim Committees on Insurance and Commerce.

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2 SECTION 3. All provisions of this act of a general and permanent nature
3 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
4 Revision Commission shall incorporate the same in the Code.

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

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

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15 SECTION 6. EMERGENCY. It is hereby found and determined by the General
16 Assembly that the Arkansas Workers Compensation insurance plan is in need of
17 greater scrutiny and regulation by the State Insurance Commissioner in order
18 to protect the workers covered by the plan; this act provides such additional
19 authority to the Insurance Commissioner; and that this act should go into
20 effect as soon as possible in order to provide the Insurance Commissioner with
21 the tools to more adequately supervise and regulate the Arkansas Workers
22 Compensation insurance plan. Therefore, an emergency is declared to exist and
23 this act being immediately necessary for the preservation of the public peace,
24 health and safety shall become effective on the date of its approval by the
25 Governor. If the bill is neither approved nor vetoed by the Governor, it
26 shall become effective on the expiration of the period of time during which
27 the Governor may veto the bill. If the bill is vetoed by the Governor and the
28 veto is overridden, it shall become effective on the date the last house
29 overrides the veto.

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/s/Bradford

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