

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas
2 82nd General Assembly
3 Regular Session, 1999
4

A Bill

HOUSE BILL 1971

5 By: Representative Hunt
6
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For An Act To Be Entitled

9 "AN ACT TO AMEND ARKANSAS CODE § 11-9-409 TO DIRECT
10 THE WORKERS' HEALTH AND SAFETY DIVISION OF THE
11 WORKERS' COMPENSATION COMMISSION TO DEVELOP AND
12 ESTABLISH A VOLUNTARY DRUG-FREE WORKPLACE PROGRAM; AND
13 FOR OTHER PURPOSES."
14

Subtitle

15 "TO DIRECT THE WORKERS' HEALTH AND SAFETY
16 DIVISION OF THE WORKERS' COMPENSATION
17 COMMISSION TO DEVELOP AND ESTABLISH A
18 VOLUNTARY DRUG-FREE WORKPLACE PROGRAM."
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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24 SECTION 1. Arkansas Code 11-9-409 is amended to read as follows:

25 "11-9-409. Safety and health loss control consultative services.

26 (a) Workers' Health and Safety Division. (1) The Workers' Compensation
27 Commission shall establish a Workers' Health and Safety Division, hereinafter
28 referred to as the "division".

29 (2) The division shall collect and serve as a repository for
30 statistical information on workers' health and safety. In cooperation with
31 and with the assistance of the Department of Labor and the State Insurance
32 Department, the division shall analyze and use the information to identify and
33 assign priorities to safety needs and to better coordinate the safety services
34 provided by public or private organizations, including insurance carriers. In
35 cooperation with and with the assistance of the Department of Labor and the
36 State Insurance Department, the division shall promote workers' health and

1 safety through educational programs and other innovative programs developed by
2 the division.

3 (3) In cooperation with and with the assistance of the Department
4 of Labor and the State Insurance Department, the division shall coordinate or
5 supervise the collection of information relating to job safety.

6 (4) The Chairman of the Workers' Compensation Commission, the
7 Director of the Department of Labor, and the Insurance Commissioner shall
8 function as an advisory committee to resolve questions regarding duplication
9 of efforts, assignment of new programs, and other matters that need
10 cooperation and coordination.

11 (5)(A) In cooperation with and with the assistance of the
12 Department of Labor and the State Insurance Department, the division shall
13 publish or procure and issue educational books, pamphlets, brochures, films,
14 videotapes, and other informational and educational material. Specific
15 educational material shall be directed to high-risk industries and jobs and
16 shall specifically address means and methods of avoiding high frequency but
17 preventable workers' injuries. Other educational material shall be directed
18 to business and industry generally and shall specifically address means and
19 methods of avoiding common workers' injuries.

20 (B) Specific decisions as to what issues and problems
21 should be addressed by such information shall be made by the division in
22 cooperation and with the assistance of the Department of Labor and the State
23 Insurance Department and with commission approval after assigning appropriate
24 priorities based on frequency of injuries, degree of hazard, severity of
25 injuries, and similar considerations.

26 (C) Such educational materials shall include specific
27 references to the requirements of state and federal laws and regulations, to
28 recommendations and practices of business, industry, and trade associations,
29 and, where needed, to recommended work practices based on recommendations made
30 by the division, in cooperation and with the assistance of the Department of
31 Labor and the State Insurance Department, for the prevention of injury.

32 (6) In cooperation with and with the assistance of the Department
33 of Labor and the State Insurance Department, the division shall cooperate with
34 employers and employees to develop means and methods of educating employees
35 and employers with regard to workplace safety.

36 (7) In cooperation with and with the assistance of the Department

1 of Labor and the State Insurance Department, the division shall encourage
 2 other entities to develop safety courses, safety plans, and safety programs.

3 (8) In cooperation with and with the assistance of the Department
 4 of Labor and the State Insurance Department, the division shall certify safe
 5 employers to provide peer review safety programs.

6 (9) In cooperation with and with the assistance of the Department
 7 of Labor and the State Insurance Department, the division shall advise
 8 insurance carrier loss control service organizations of hazard
 9 classifications, specific employers, industries, occupations, or geographic
 10 regions to which loss control services should be directed or of the identity
 11 and types of injuries or occupational diseases for prevention of the same to
 12 which loss control services should be directed and shall advise insurance
 13 carrier loss control service organizations of safety needs and priorities
 14 recommended by the division in cooperation with and with the assistance of the
 15 Department of Labor and the State Insurance Department.

16 (b) Job Safety Information System. (1) In cooperation with and with the
 17 assistance of the Department of Labor and the State Insurance Department, the
 18 division shall establish and maintain a job safety information system.

19 (2)(A) The job safety information system shall include a
 20 comprehensive data base that incorporates all pertinent information relating
 21 to each reported injury.

22 (B) The identity of the employee is confidential and may
 23 not be disclosed as part of the job safety information system.

24 (3) Employers shall file with the commission such reports as may
 25 be necessary. The commission shall promulgate rules and prescribe the form
 26 and manner of such reports.

27 (4) In cooperation with and with the assistance of the Department
 28 of Labor and the State Insurance Department, the division is authorized,
 29 empowered, and directed to obtain, from any state agency, data and statistics,
 30 including those compiled for the purpose of rate making.

31 (5) The division shall consult the Department of Labor and any
 32 other affected state agencies in the design of data information and retrieval
 33 systems that will accomplish the mutual purposes of those agencies and of the
 34 division.

35 (c) Extra-Hazardous Employer Program. (1)(A) In cooperation with and
 36 with the assistance of the Department of Labor and the State Insurance

1 Department, the division shall develop a program, including injury frequency,
2 to identify extra-hazardous employers. The term "extra-hazardous employer"
3 includes an employer whose injury frequencies substantially exceed those that
4 may reasonably be expected in that employer's business or industry, an
5 employer whose experience modifier is identified by the commission as too
6 high, and such other employers as may, following a public hearing, be
7 identified as extra-hazardous.

8 (B) The division shall notify each identified extra-
9 hazardous employer or the carrier for the employer that the employer has been
10 identified as an extra-hazardous employer.

11 (2)(A) An employer who receives notification under subdivision
12 (c)(1)(B) of this section must obtain a safety consultation within thirty (30)
13 days from the Department of Labor, the employer's insurance carrier, or
14 another professional source approved by the division for that purpose.

15 (B) The safety consultant shall file a written report with
16 the division and the employer setting out any hazardous conditions or
17 practices identified by the safety consultation.

18 (3) The employer and the consultant shall formulate a specific
19 accident prevention plan which addresses the hazards identified by the
20 consultant. The employer shall comply with the accident prevention plan.

21 (4) The division may investigate accidents occurring at the work
22 sites of an employer for whom a plan has been formulated under subdivision
23 (c)(3) of this section, and the division may otherwise monitor the
24 implementation of the accident prevention plan as it finds necessary.

25 (5)(A) Six (6) months after the formulation of an accident
26 prevention plan prescribed by subdivision (c)(3) of this section, the division
27 shall conduct a follow-up inspection of the employer's premises. The division
28 may require the participation of the safety consultant who performed the
29 initial consultation and formulated the safety plan.

30 (B) If the division determines that the employer has
31 complied with the terms of the accident prevention plan or has implemented
32 other acceptable corrective measures, the division shall so certify.

33 (C) An employer who the division determines has failed or
34 refused to implement the accident prevention plan or other suitable hazard
35 abatement measures is subject to civil penalties as follows:

36 (i) The commission may assess a civil penalty against

1 an employer who fails or refuses to implement the accident prevention plan or
2 other suitable hazard abatement procedures in an amount up to one thousand
3 dollars (\$1,000) per day of violation payable to the Death and Permanent Total
4 Disability Trust Fund;

5 (ii) Further, the commission may petition the
6 Chancery Court of Pulaski County, or of the county where the business is
7 located, for an order enjoining the employer from engaging in further
8 employment until such time as the employer implements the prevention plan or
9 abatement measure described above and/or makes payment of all civil penalties.

10 (6) If, at the time of the inspection required under subdivision
11 (c)(5)(A) of this section, the employer continues to exceed the injury
12 frequencies that may reasonably be expected in that employer's business or
13 industry, the division shall continue to monitor the safety conditions at the
14 work site and may formulate additional safety plans reasonably calculated to
15 abate hazards. The employer shall comply with such plans and may be subject
16 to additional penalties for failure to implement the plan or plans.

17 (7) An employer may request a hearing before the Full Commission
18 to contest findings made by the division under this section.

19 (8) The identification as an extra-hazardous employer under this
20 section is not admissible in any judicial proceeding unless the commission has
21 determined that the employer is not in compliance with this section and that
22 determination has not been reversed or superseded at the time of the event
23 giving rise to the judicial proceeding.

24 (d) Accident Prevention Services. (1) Any insurance company desiring to
25 write workers' compensation insurance in Arkansas shall maintain or provide
26 accident prevention services as a prerequisite for a license to write such
27 insurance. Such services shall be adequate to furnish accident prevention
28 programs required by the nature of its policyholders' operations and shall
29 include surveys, recommendations, training programs, consultations, analyses
30 of accident causes, industrial hygiene, and industrial health services to
31 implement the program of accident prevention services.

32 (2) Notice that services are available to the policyholder from
33 the insurance company must appear in no less than ten (10) point bold type on
34 the front of each workers' compensation insurance policy delivered or issued
35 for delivery in the state.

36 (3) At least once each year, each insurance company writing

1 workers' compensation insurance in Arkansas must submit to the division
 2 detailed information on the type of accident prevention services offered to
 3 that insurance company's policyholders. The information must include any
 4 additional information required by the commission.

5 (4) In cooperation with and with the assistance of the Department
 6 of Labor and the State Insurance Department, the division shall conduct
 7 inspections to determine the adequacy of the accident prevention services
 8 required by subdivision (d)(1) of this section at least every two (2) years
 9 for each insurance company writing workers' compensation insurance in
 10 Arkansas.

11 (5) If the insurance company does not maintain or provide the
 12 accident prevention services required by this subsection, or if the insurance
 13 company does not use the services in a reasonable manner to prevent injury to
 14 employees of its policyholders, the insurance company may be subjected to the
 15 same civil penalties as are assessable and enforceable against employers as
 16 set forth above in subdivision (c)(5)(C) of this section and shall be subject
 17 to suspension or revocation of license to do business in this state by the
 18 Insurance Commissioner.

19 (6) The commission shall employ the qualified personnel necessary
 20 to enforce this section.

21 (e) Drug free Workplace Program (1) The Workers' Health and Safety
 22 Division, in cooperation with the State Insurance Department, shall develop
 23 and establish a voluntary program to promote the drug-free workplace, which
 24 shall:

25 (A) assist and certify employers that establish drug-free
 26 workplace programs;

27 (B) provide for credits in workers compensation insurance
 28 premiums for employers certified as drug-free workplaces; and,

29 (C) provide guidelines for drug and alcohol testing of
 30 employees and applicants for employment.

31 (2) The Workers' Compensation Commission is authorized and
 32 directed to promulgate and adopt necessary rules and regulations establishing
 33 minimal acceptable standards and requirements for drug-free workplace
 34 programs, and programs for drug and alcohol testing of employees and
 35 applicants for employment, which shall specifically provide, in addition to
 36 all other standards and requirements:

1 (A) that any drug-free workplace program or drug and alcohol
 2 testing program which complies with the standards of the U. S. Department of
 3 Transportation "Procedures for Transportation Workplace Drug Testing Program"
 4 presently cited as 49 CFR Part 382 shall be certified only for those employees
 5 who are subject to such Department of Transportation standards and programs by
 6 the nature of their employment; and,

7 (B) for a workers' compensation insurance premium credit
 8 program, in cooperation with the State Insurance Department, in which all
 9 insurance carriers writing workers' compensation insurance in this state
 10 shall participate.

11 ~~(e)~~ (f) Immunity from Certain Liability. (1) Except as provided in
 12 subdivision (d)(5) of this section, the insurance company, the agent, servant,
 13 or employee of the insurance company or self-insured employer, or a safety
 14 consultant who performs a safety consultation under this section shall have no
 15 liability with respect to any accident based on the allegation that such
 16 accident was caused or could have been prevented by a program, inspection, or
 17 other activity or service undertaken by the insurance company or self-insured
 18 employer for the prevention of accidents in connection with operations of the
 19 employer.

20 (2) Provided, however, this immunity shall not affect the
 21 liability of the insurance carrier or self-insured employer for compensation
 22 or as otherwise provided in this chapter.

23 ~~(f)~~ (g) Exclusive Remedy. This section does not create an independent
 24 cause of action at law or in equity."
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26 SECTION 2. All provisions of this act of a general and permanent nature
 27 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
 28 Revision Commission shall incorporate the same in the Code.
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30 SECTION 3. If any provision of this act or the application thereof to
 31 any person or circumstance is held invalid, such invalidity shall not affect
 32 other provisions or applications of the act which can be given effect without
 33 the invalid provision or application, and to this end the provisions of this
 34 act are declared to be severable.
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36 SECTION 4. All laws and parts of laws in conflict with this act are

1 hereby repeal ed.

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