

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 83rd General Assembly
3 Regular Session, 2001

A Bill

HOUSE BILL 1605

4
5 By: Representative Rodgers
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For An Act To Be Entitled

9 AN ACT TO AMEND ARKANSAS CODE 11-9-409; TO ELIMINATE
10 THE WORKERS' HEALTH AND SAFETY DIVISION OF THE
11 WORKERS' COMPENSATION COMMISSION; AND FOR OTHER
12 PURPOSES.
13

Subtitle

14 AN ACT TO AMEND ARKANSAS CODE 11-9-409;
15 TO ELIMINATE THE WORKERS' HEALTH AND
16 SAFETY DIVISION OF THE WORKERS'
17 COMPENSATION COMMISSION.
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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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23 SECTION 1. Arkansas Code 11-9-409 is amended to read as follows:
24 11-9-409. Safety and health loss control consultative services.

25 ~~(a) WORKERS' HEALTH AND SAFETY DIVISION. (1) The Workers' Compensation~~
26 ~~Commission shall establish a Workers' Health and Safety Division, hereinafter~~
27 ~~referred to as the "division".~~

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

1 ~~the division.~~

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

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

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

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

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

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

35 ~~(7) In cooperation with and with the assistance of the Department~~
 36 ~~of Labor and the State Insurance Department, the division shall encourage~~

1 ~~other entities to develop safety courses, safety plans, and safety programs.~~

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

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

15 ~~(b)(a) JOB SAFETY INFORMATION SYSTEM. (1) In cooperation with and~~
16 ~~with the assistance of the Department of Labor and the State Insurance~~
17 ~~Department, the division The commi ssi on shall establish and maintain a job~~
18 ~~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 and
26 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 The commi ssi on is~~
29 ~~authorized, empowered, and directed to obtain, from any state agency, data and~~
30 ~~statistics, including those compiled for the purpose of rate making.~~

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

35 ~~(c) EXTRA HAZARDOUS EMPLOYER PROGRAM.~~

36 ~~(1)(A) In cooperation with and with the assistance of the~~

1 Department of Labor and the State Insurance Department, the division shall
2 develop a program, including injury frequency, to identify extra hazardous
3 employers. The term "extra hazardous employer" includes an employer whose
4 injury frequencies substantially exceed those that may reasonably be expected
5 in that employer's business or industry, an employer whose experience modifier
6 is identified by the commission as too high, and such other employers as may,
7 following a public hearing, be 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 Chancery~~
6 ~~Court of Pulaski County, or of the county where the business is located, for~~
7 ~~an order enjoining the employer from engaging in further employment until such~~
8 ~~time as the employer implements the prevention plan or abatement measure~~
9 ~~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 to~~
16 ~~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)(b)~~ ACCIDENT PREVENTION SERVICES. (1) Any insurance company
25 desiring to write workers' compensation insurance in Arkansas shall maintain
26 or provide accident prevention services as a prerequisite for a license to
27 write such insurance. Such services shall be adequate to furnish accident
28 prevention programs required by the nature of its policyholders' operations
29 and shall include surveys, recommendations, training programs, consultations,
30 analyses of accident causes, industrial hygiene, and industrial health
31 services to 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~~ The commission shall
7 conduct inspections to determine the adequacy of the accident prevention
8 services required by subdivision ~~(d)(b)~~(1) of this section at least every two
9 (2) years for each insurance company writing workers' compensation insurance
10 in 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~~ a civil penalties penalty as are assessable and enforceable against
16 ~~employers as set forth above in subdivision (c)(5)(C) of this section~~ assessed
17 by the commission in an amount up to one thousand dollars (\$1,000) per day of
18 violation payable to the Death and Permanent Total Disability Trust Fund and
19 shall be subject to suspension or revocation of license to do business in this
20 state by the Insurance Commissioner.

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

23 ~~(e)(c)~~ IMMUNITY FROM CERTAIN LIABILITY. (1) Except as provided in
24 subdivision ~~(d)(b)~~(5) of this section, the insurance company, the agent,
25 servant, or employee of the insurance company or self-insured employer, or a
26 safety consultant who performs a safety consultation under this section shall
27 have no liability with respect to any accident based on the allegation that
28 such accident was caused or could have been prevented by a program,
29 inspection, or other activity or service undertaken by the insurance company
30 or self-insured employer for the prevention of accidents in connection with
31 operations of the employer.

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

35 ~~(f)(d)~~ EXCLUSIVE REMEDY. This section does not create an independent
36 cause of action at law or in equity.