

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 As Engrossed: S2/7/07 S2/15/07 H2/27/07 H3/5/07

2 86th General Assembly

# A Bill

3 Regular Session, 2007

SENATE BILL 191

4

5 By: Senators Steele, Faris

6 By: Representatives E. Brown, Medley

7

8

9

## For An Act To Be Entitled

10 AN ACT TO AUTHORIZE THE GOVERNOR TO CREATE THE  
11 DEPARTMENT OF HEALTH; TO AUTHORIZE THE GOVERNOR  
12 TO TRANSFER THE POWERS, DUTIES, APPROPRIATIONS,  
13 AND OPERATIONS OF THE DIVISION OF HEALTH OF THE  
14 DEPARTMENT OF HEALTH AND HUMAN SERVICES TO THE  
15 DEPARTMENT OF HEALTH; AND FOR OTHER PURPOSES.

16

17

### Subtitle

18 TO AUTHORIZE THE GOVERNOR TO CREATE THE  
19 DEPARTMENT OF HEALTH AND TO TRANSFER THE  
20 POWERS, DUTIES, APPROPRIATIONS AND  
21 OPERATIONS OF THE *DIVISION* OF HEALTH OF  
22 THE DEPARTMENT OF HEALTH AND HUMAN  
23 SERVICES TO THE DEPARTMENT OF HEALTH.

24

25

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

27

28 *SECTION 1. Creation of the Department of Health.*

29 *(a) There is created the Department of Health, that is to be*  
30 *established if the Governor orders the separation of the Division of Health*  
31 *of the Department of Health and Human Services from the Department of Health*  
32 *and Human Services.*

33 *(b) If the Governor establishes the Department of Health under*  
34 *subsection (a) of this section, the Arkansas Code Revision Commission shall*  
35 *replace all references in the Arkansas Code to the:*

36 *(1) "Division of Health of the Department of Health and Human*



1 Services" or "Division of Health" with "Department of Health"; and

2 (2) "Department of Health and Human Services" with "Department  
3 of Human Services".

4 (c) Sections 2 through 12 of this act become effective only if the  
5 Governor establishes the Department of Health under subsection (a) of this  
6 section.

7  
8 SECTION 2. Transfer of the Division of Health of the Department of  
9 Health and Human Services out of the Department of Health and Human Services.

10 (a) Effective sixty (60) days after the Governor establishes the  
11 Department of Health under this act, and as provided in the orders of the  
12 Governor, the following may be transferred to the Department of Health:

13 (1) Authority, powers, duties, and functions as established by  
14 law for the Division of Health of the Department of Health and Human  
15 Services, including purchasing, budgeting, fiscal, accounting, human  
16 resources, payroll, legal, information systems, maintenance, program support,  
17 administrative support, and other management functions;

18 (2) Records, personnel, property, unexpended balances of  
19 appropriations, allocations, or other funds of the Division of Health of the  
20 Department of Health and Human Services;

21 (3) Rulemaking, regulation, and licensing, promulgation of  
22 rules, rates, regulations, and standards, and the rendering of findings,  
23 orders, and adjudications as established by law for the Division of Health of  
24 the Department of Health and Human Services, except as otherwise specified in  
25 this act.

26 (b) Powers, duties, and functions, including without limitation,  
27 rulemaking, regulation, and licensing, promulgation of rules, rates,  
28 regulations, and standards, budgetary responsibilities, and the rendering of  
29 findings, orders, and adjudications as established by law for the Breast  
30 Cancer Control Program or other transferred entities within the Division of  
31 Health of the Department of Health and Human Services shall be retained as  
32 they existed on June 30, 2005.

33 (c) The Governor may appoint a Surgeon General in accordance with §  
34 20-7-103.

35  
36 SECTION 3. Transfer of the State Board of Health to the Department of

1 Health.

2 (a) Effective sixty (60) days after the Department of Health is  
3 established, the State Board of Health shall be transferred to the Department  
4 of Health.

5 (b) The State Board of Health shall receive administrative support  
6 from the Department of Health and shall retain the same powers, authorities,  
7 duties, and functions prescribed by law as it had before the transfer and  
8 shall have all rule-making authority prescribed by law to the Division of  
9 Health of the Department of Health and Human Services before the transfer,  
10 except as provided for in this act, including, without limitation:

11 (1) Rule making, licensing, and registration;

12 (2) The promulgation of rules, rates, and standards;

13 (3) Examining, investigating, inspecting, and reviewing; and

14 (4) The rendering of findings, orders, and adjudications.

15  
16 SECTION 4. Arkansas Code §§ 20-7-102 and 20-7-103 are amended to read  
17 as follows:

18 20-7-102. Members – Appointment.

19 (a) The State Board of Health shall consist of ~~twenty-three (23)~~ the  
20 following members, to be appointed by the Governor as follows:

21 (1)(A) Seven (7) members of the board shall be licensed medical  
22 doctors of good professional standing, to be appointed by the Governor as  
23 follows:

24 (i) One (1) member shall be appointed from each of  
25 the four (4) congressional districts of this state as established by § 7-2-  
26 101 et seq.; and

27 (ii) Three (3) members shall be appointed from the  
28 state at large from a list of not fewer than three (3) names presented for  
29 each position by the Arkansas Medical Society.

30 (B) Notwithstanding the provisions of subdivision  
31 (a)(1)(A) of this section, at least one (1) of the positions allocated for  
32 licensed medical doctors shall be an osteopathic physician appointed from a  
33 list of not fewer than three (3) names presented to the Governor by the  
34 Arkansas Osteopathic Medical Association from the state at large;

35 (2) One (1) member shall be a regularly licensed, registered,  
36 and practicing dentist who has at least seven (7) years' experience in the

1 practice of his or her profession in this state. This member shall be  
2 appointed from a list of not fewer than three (3) names presented by the  
3 Arkansas State Dental Association;

4 (3) One (1) member shall be a registered professional engineer  
5 who has at least seven (7) years' experience in the practice of his or her  
6 profession in this state. This member shall be appointed from a list of not  
7 fewer than three (3) names presented by the Arkansas Society of Professional  
8 Engineers;

9 (4) One (1) member shall be a regularly licensed professional  
10 nurse who has been a resident of the state for at least seven (7) years  
11 preceding the appointment and who has at least a bachelor's degree and five  
12 (5) years' nursing experience in the state. This member shall be appointed  
13 from a list of not more than three (3) names presented by the Arkansas State  
14 Nurses Association;

15 (5) One (1) member shall be a regularly licensed pharmacist who  
16 has been actively engaged in the practice of pharmacy for at least seven (7)  
17 years preceding his or her appointment. This member shall be appointed from a  
18 list of not fewer than three (3) names presented by the Arkansas Pharmacists  
19 Association;

20 (6) One (1) member shall be a regularly licensed veterinarian  
21 who has been actively engaged in the practice of veterinary medicine for at  
22 least seven (7) years preceding his or her appointment. This member shall be  
23 appointed from a list of not fewer than three (3) names presented by the  
24 Arkansas Veterinary Medical Association;

25 (7) One (1) member shall be a registered sanitarian who has at  
26 least seven (7) years' experience in the practice of his or her profession  
27 preceding his or her appointment. This member shall be appointed from a list  
28 of not fewer than three (3) names presented by the Arkansas State Board of  
29 Sanitarians;

30 (8) One (1) member shall be a hospital administrator who has at  
31 least seven (7) years' experience in the practice of his or her profession in  
32 Arkansas. This member shall be appointed from a list of not fewer than three  
33 (3) names presented by the Arkansas Hospital Association;

34 (9) One (1) member shall be a regularly licensed, registered,  
35 and practicing optometrist who has at least seven (7) years' experience in  
36 the practice of his or her profession in this state. This member shall be

1 appointed from a list of not fewer than three (3) names presented by the  
2 Arkansas Optometric Association;

3 (10) One (1) member shall be a regularly licensed and practicing  
4 chiropractor. This member shall be appointed from a list of not fewer than  
5 three (3) names submitted by the Arkansas Chiropractic Association or the  
6 Arkansas Chiropractic Society;

7 (11) One (1) member shall be a restaurant operator who has owned  
8 or operated a restaurant for a minimum of five (5) years. This member shall  
9 be appointed by the Governor from a list of three (3) names submitted by the  
10 Arkansas Hospitality Association;

11 (12) One (1) member shall be a consumer representative who has  
12 an interest in public health. This member shall be appointed by the Governor  
13 from the state at large;

14 (13) One (1) member shall be more than sixty (60) years old and  
15 represent the elderly. This person shall not be actively engaged in or  
16 retired from any occupation, profession, or industry to be regulated by the  
17 board. The member shall be appointed by the Governor from the state at large  
18 and be subject to confirmation by the Senate;

19 (14) One (1) member shall be a licensed doctor of podiatric  
20 medicine of good professional standing who has at least seven (7) years'  
21 experience in the practice of the profession in this state. The member shall  
22 be appointed from a list of not fewer than three (3) names presented by the  
23 Arkansas Podiatric Medical Association;

24 (15) One (1) member shall be a member of the Arkansas Public  
25 Health Association. The member shall be appointed by the Governor from a list  
26 of three (3) names submitted by the Arkansas Public Health Association;

27 (16) One (1) member shall be a licensed medical doctor of good  
28 professional standing who shall be appointed from a rural county that  
29 contains a medically underserved population in the state; and

30 (17) ~~One (1) member shall be the Director of the Department of~~  
31 ~~Health and Human Services or his or her designee~~ One (1) member shall be the  
32 Director of the Department of Health or the Director of the Division of  
33 Health of the Arkansas Department of Health and Human Services.

34 (b) Each of the members of the board so appointed shall take the oath  
35 prescribed by the Arkansas Constitution for state officers and shall be  
36 commissioned by the Governor in the same manner as other state officials.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36

20-7-103. Members – Officers.

(a) The members of the State Board of Health shall elect one (1) of the members as president. However, the Director of the Department of Health or the Director of the Division of Health of the Department of Health and Human Services ~~or his or her designee on the board~~ shall not serve as the President of the State Board of Health.

(b)(1) With approval of the board the Governor ~~shall~~ may appoint a ~~Chief Health Officer~~ Surgeon General for the State of Arkansas who shall not be a current sitting member of the board and who shall:

(A) Be a graduate of a legally constituted and reputable medical college;

(B) Be of good standing; ~~and~~

(C) Have all the powers of the members of the board~~;~~; and

(D) Serve as a cabinet level advisor to the Governor.

(2) ~~The Chief Health Officer~~ Surgeon General ~~shall also be known as the Secretary of the State Board of Health and shall perform such duties as may be required of him or her by the board or by this subchapter~~ Governor or the board, or both, including, but not limited to:

(A) ~~Serving as the public representative for the board~~ Reviewing, assessing, and developing health policy options, including insurance coverage, health risk management, disease prevention, and health promotion strategies across state agencies;

(B) ~~Serving as the board's representative on various other state and private boards and commissions as required by the board or in provisions of the Arkansas Code~~ Providing policy options for the Governor and senior state agency officials;

(C) ~~Representing the board by providing health information and assisting the division in providing risk factor assessments in regard to improving quality of health issues at public events; and~~ Raising awareness of healthcare and public health areas of priority for advancement of the state population's health;

(D) ~~Assisting the board and the division in~~ Reviewing legislative analyses and proposed legislation and creating position statements for the Governor and senior state agency officials~~;~~;

(E) Advising the Governor, senior state agency officials,

1 and governing boards and commissions on policy issues and program  
 2 accomplishments; and

3 (F) Providing medical review oversight and guidance to  
 4 health and human services clinical programs upon request.

5 ~~(i) The creation of various health-oriented outreach~~  
 6 ~~campaigns utilizing print, radio, and television public service~~  
 7 ~~announcements, advertisements, posters, and other materials;~~

8 ~~(ii) Targeting population segments at risk for~~  
 9 ~~various health issues;~~

10 ~~(iii) Providing reliable information on various~~  
 11 ~~health issues to policy makers;~~

12 ~~(iv) Distributing information through county health~~  
 13 ~~departments, schools, area agencies on aging, employer wellness programs,~~  
 14 ~~physicians, hospitals and health maintenance organizations, women's groups,~~  
 15 ~~nonprofit organizations, and community based organizations;~~

16 ~~(v) Raising, by any other strategy, public awareness~~  
 17 ~~about health issues that are consistent with the provisions of this~~  
 18 ~~subchapter;~~

19 ~~(vi) Identifying and obtaining educational materials~~  
 20 ~~for the professional health care providers that translate the latest~~  
 21 ~~scientific and medical information on various health issues into clinical~~  
 22 ~~applications;~~

23 ~~(vii) Raising awareness among professional health~~  
 24 ~~care providers as to the importance of prevention, early detection,~~  
 25 ~~treatment, and rehabilitation practices, techniques, and reporting measures~~  
 26 ~~related to various health issues; and~~

27 ~~(viii) Developing and conducting workshops and~~  
 28 ~~seminars for in-depth professional development in the field of the care and~~  
 29 ~~management related to various health issues.~~

30  
 31 SECTION 5. Arkansas Code § 20-7-105(a), concerning the proceedings of  
 32 the State Board of Health, is amended to read as follows:

33 (a) (1) The State Board of Health shall meet at least one (1) time  
 34 every three (3) months ~~and,~~

35 (2) ~~upon~~ Upon the call of the President of the State Board of  
 36 Health, ~~the Director of the Department of Health and Human Services,~~ or a

1 majority of the members of the board, the board shall meet at such other  
2 times as may be necessary in the interest of public health.

3  
4 SECTION 6. Arkansas Code § 20-7-106 is amended to read as follows:  
5 20-7-106. Office.

6 The office of the State Board of Health shall be located in Little  
7 Rock, and the board shall be furnished with all necessary equipment and  
8 supplies, including laboratory supplies, books, stationery, blanks,  
9 furniture, etc., as are provided other officers of the state and as are  
10 necessary for carrying on the work of the board, and the office is to be  
11 provided in a suitable building to be designated by the ~~Governor~~ Director of  
12 the Department of Health or the Director of the Division of Health of the  
13 Department of Health and Human Services.

14  
15 SECTION 7. Arkansas Code § 25-9-101 is amended to read as follows:  
16 25-9-101. Creation – Director – Organization – Personnel.

17 (a)(1)(A) ~~There is created the Division of Health of the Department of~~  
18 ~~Health and Human Services~~ Department of Health, that is to be established if  
19 the Governor orders the separation of the Division of Health of the  
20 Department of Health and Human Services from the Department of Health and  
21 Human Services.

22 (B) Unless stated otherwise, all references in this  
23 chapter to “Director” shall mean the Director of the Department of Health if  
24 established, and otherwise the Director of the Division of Health of the  
25 Department of Health and Human Services.

26 (2)(A) ~~The executive head of the Division of Health of the~~  
27 ~~Department of Health and Human Services shall be the Director of the Division~~  
28 ~~of Health of the Department of Health and Human Services~~ Governor shall  
29 appoint the Director of the Department of Health if established, and  
30 otherwise the Director of the Division of Health of the Department of Health  
31 and Human Services.

32 (B) The Director shall:

33 (i) Serve as the executive head of the Department of  
34 Health or the Division of Health of the Department of Health and Human  
35 Services;

36 (ii) Serve at the pleasure of the Governor;



1 (iii) Act as the Secretary of the Board of Health;  
2 and

3 (iv) Serve as the State Health Officer, with  
4 appropriate authority to ensure public health and safety, including  
5 leadership on health issues related to emergency preparedness and disaster  
6 management.

7 ~~(b) The Division of Health of the Department of Health and Human~~  
8 ~~Services shall consist of the divisions which existed as of July 1, 1971,~~  
9 ~~within the State Board of Health, created by § 20-7-101 et seq., and any~~  
10 ~~other divisions or units which may be created by law and placed under the~~  
11 ~~Division of Health of the Department of Health and Human Services.~~

12 ~~(e)(b)(1)(A) The Director of the Division of Health of the Department~~  
13 ~~of Health and Human Services director, with the advice and consent of the~~  
14 ~~Director of the Department of Health and Human Services, Governor, shall~~  
15 ~~appoint the heads of the respective units of the Division of Health of the~~  
16 ~~Department of Health and Human Services or the Department of Health.~~

17 ~~(B) All other personnel of the Division of Health of the~~  
18 ~~Department of Health and Human Services shall be employed by and shall serve~~  
19 ~~at the pleasure of the Director of the Department of Health and Human~~  
20 ~~Services.~~

21 ~~(2) However, nothing in this section shall be so construed as to~~  
22 ~~reduce any right ~~which~~ that an employee of the Division of Health of the~~  
23 ~~Department of Health and Human Services or the Department of Health shall~~  
24 ~~have has under any civil service or merit system.~~

25 ~~(d)(c)(1) Each unit of the Division of Health of the Department of~~  
26 ~~Health and Human Services Department of Health shall be under the direction,~~  
27 ~~control, and supervision of the Director of the Department of Health and~~  
28 ~~Human Services director.~~

29 ~~(2) The Director of the Division of Health of the Department of~~  
30 ~~Health and Human Services, with the consent of the Director of the Department~~  
31 ~~of Health and Human Services, director may delegate his or her functions,~~  
32 ~~powers, and duties to various units of the Division of Health of the~~  
33 ~~Department of Health and Human Services Department of Health as he or she~~  
34 ~~shall deem desirable and necessary for the effective and efficient operation~~  
35 ~~of the Division of Health of the Department of Health and Human Services~~  
36 ~~Department of Health.~~

1       ~~(e)~~(d)(1) The Division of Health of the Department of Health and Human  
2       Services or the Department of Health shall maintain an Office of Oral Health.

3               (2) The Director of the Office of Oral Health shall be an  
4       experienced public health dentist licensed to practice under the Arkansas  
5       Dental Practice Act, § 17-82-101 et seq.

6               (3) The Director of the Office of Oral Health shall:

7                       (A) Plan, direct, and coordinate all dental public health  
8       programs with other local, state, and national health programs;

9                       (B) Serve as the department's chief advisor on matters  
10      involving oral health; and

11                      (C) Plan, implement, and evaluate all oral health programs  
12      within the department.

13  
14       SECTION 8. Arkansas Code § 25-10-101 is amended to read as follows:

15       25-10-101. Creation – Appointment of director.

16       (a) There is created a ~~Department of Health and Human Services~~  
17      Department of Human Services.

18       (b)(1) The executive head of the department shall be the Director of  
19      the ~~Department of Health and Human Services~~ Department of Human Services.

20       (2) The director shall be appointed by the Governor with the  
21      consent of the Senate and shall serve at the pleasure of the Governor.

22  
23       SECTION 9. Arkansas Code § 25-10-102 is amended to read as follows:

24       25-10-102. Organization generally.

25       (a) All references in this chapter to "Department" mean the Department  
26      of Health and Human Services or, if the Department of Health is established,  
27      to the Department of Human Services. All references in this chapter to  
28      "Director" shall mean the Director of the Department of Health and Human  
29      Services or, if the Department of Health is established, the Director of the  
30      Department of Human Services.

31       (b) The ~~Department of Health and Human Services~~ department shall  
32      consist of and be operated under an integrated service system consisting of  
33      the following ~~twelve (12)~~ divisions with ~~responsibility~~ responsibilities and  
34      programs assigned to them as determined by the Director of the ~~Department of~~  
35      ~~Health and Human Services~~:

36               (1) A Division of Aging and Adult Services;

- 1           (2) A Division of Medical Services;
- 2           (3) A Division of Behavioral Health, which shall include
- 3 community mental health centers, state hospitals, and the Bureau of Alcohol
- 4 and Drug Abuse Prevention;
- 5           (4) A Division of Developmental Disabilities Services, which
- 6 shall include both community programs and human development centers;
- 7           (5) A Division of County Operations;
- 8           (6) A Division of Administrative Services;
- 9           (7) A Division of Youth Services, which shall include serious
- 10 offender and community-based programs and the youth service centers;
- 11           (8) A Division of Volunteerism;
- 12           (9) A Division of State Services for the Blind;
- 13           (10) A Division of Children and Family Services;
- 14           (11) A Division of Child Care and Early Childhood Education; and
- 15           (12) A Division of Health, subject to the establishment of a
- 16 Department of Health.

17           ~~(b)(1)(A)(c)(1)(A)~~ Each division of the ~~Department of Health and Human~~

18 ~~Services~~ department shall be under the direction, control, and supervision of

19 the director.

20           (B) From time to time, the director may transfer or assign

21 existing duties or new programs or duties of the department to offices,

22 sections, or units as he or she deems necessary for the efficient and

23 necessary operation of the department.

24           (C) Prior to implementation of any reorganization, the

25 director shall obtain the advice of the House Interim Committee on State

26 Agencies and Governmental Affairs and the Senate Interim Committee on State

27 Agencies and Governmental Affairs.

28           (2)(A) However, the state institutions and the operation of

29 state institutional programs under the jurisdiction of the Board of

30 Developmental Disabilities Services and the Department of ~~Health and Human~~

31 ~~Services~~ State Institutional System Board, as provided by law, shall be under

32 the control of their respective boards.

33           (B) The boards shall perform their respective functions

34 and duties under the general guidelines and standards promulgated by the

35 director.

36           (3) The Division of State Services for the Blind and the Board

1 of the Division of State Services for the Blind shall continue to function  
2 within the ~~Department of Health and Human Services~~ department with the powers  
3 prescribed in § 25-10-201 et seq.

4  
5 SECTION 10. Arkansas Code §§ 25-10-401 and 25-10-402 are amended to  
6 read as follows:

7 25-10-401. Creation.

8 The state institutions ~~of the Department of Health and Human Services~~,  
9 known as the State Hospital for the Mentally Ill at Little Rock, the long-  
10 term care facility at Benton, the George W. Jackson Mental Health Center at  
11 Jonesboro, the youth services centers located at Alexander and North Little  
12 Rock, and all other facilities owned and operated by the ~~Department of Health~~  
13 ~~and Human Services~~ department for youth services or mental health treatment  
14 are consolidated to form the Department ~~of Health and Human Services~~ State  
15 Institutional System.

16  
17 25-10-402. Purpose – Guidelines.

18 (a) The Department ~~of Health and Human Services~~ State Institutional  
19 System Board is established to manage the Department ~~of Health and Human~~  
20 ~~Services~~ State Institutional System, as provided and intended by Arkansas  
21 Constitution, Amendment 33.

22 (b) The board shall perform its functions and duties in accordance  
23 with the general guidelines, policies, and regulations of the Department ~~of~~  
24 ~~Health and Human Services~~ governing divisions, offices, sections, or units  
25 within the department with respect to budgets, personnel and personnel  
26 policies, records, purchasing, bookkeeping, and other administrative  
27 procedures prescribed by the Director of the Department ~~of Health and Human~~  
28 ~~Services~~.

29  
30 SECTION 11. EMERGENCY CLAUSE. It is found and determined by the  
31 General Assembly of the State of Arkansas that many services delivered by the  
32 various divisions, offices, and units the Department of Health and Human  
33 Services are essential to the public health, safety, and welfare; that the  
34 state fiscal year begins July 1; that beginning the process of decoupling the  
35 Division of Health of the Department of Health and Human Services from the  
36 Department of Health and Human Services during a fiscal year will cause

1 disruptions of services and unnecessary time, effort, and expense in  
2 reallocating appropriations, budgets, personnel, equipment, and capital  
3 expenditures during a fiscal year; and that this act is immediately necessary  
4 because a delay beyond the beginning of the fiscal year will disrupt  
5 essential programs and services. Therefore, an emergency is declared to  
6 exist and this act being necessary for the preservation of the public peace,  
7 health, and safety shall become effective on:

8 (1) The date of its approval by the Governor;

9 (2) If the bill is neither approved nor vetoed by the Governor,  
10 the expiration of the period of time during which the Governor may veto the  
11 bill; or

12 (3) If the bill is vetoed by the Governor and the veto is  
13 overridden, the date the last house overrides the veto.

14  
15 /s/ Steele  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36