

1 **State of Arkansas**
2 **79th General Assembly**
3 **Regular Session, 1993**

A Bill

ACT 796 OF 1993
HOUSE BILL 1615

4 **By: Representatives M. Wilson, Pollan, and Arnold**

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For An Act To Be Entitled

8 "AN ACT TO INCREASE WORKERS COMPENSATION BENEFITS FOR
9 EMPLOYEES AND TO SUBSTANTIALLY *RESTRUCTURE* THE WORKERS
10 COMPENSATION LAWS TO DECREASE COSTS TO EMPLOYERS;
11 INCLUDING ASPECTS OF THE INITIATIVE BY INSURANCE
12 COMMISSIONER DOUGLASS AND PROPOSALS OF AN AD HOC STUDY
13 COMMITTEE APPOINTED BY THE JOINT INTERIM COMMITTEE ON
14 INSURANCE AND COMMERCE; THE SAME BEING ARKANSAS CODE
15 SECTIONS 11-9-101 THROUGH 11-9-911; AND FOR OTHER
16 PURPOSES."

17
18

Subtitle

19 "AMENDING THE WORKERS COMPENSATION LAW TO INCREASE
20 BENEFITS AND *RESTRUCTURE* THE SYSTEM TO MAKE IT MORE COST
21 EFFECTIVE."

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

25

26 *SECTION 1. Arkansas Code §11-9-101 is amended to read as follows:*

27 *"11-9-101. Title.*

28 *(A) This chapter shall be cited as the Workers Compensation Law_.*

29 *(B) The primary purposes of the workers_ compensation laws are to pay*
30 *timely temporary and permanent disability benefits to all legitimately injured*
31 *workers that suffer an injury or disease arising out of and in the course of*
32 *their employment, to pay reasonable and necessary medical expenses resulting*
33 *therefrom and then to return the worker to the workforce, and to improve*
34 *workplace safety through safety programs; improve health care delivery through*
35 *use of managed care concepts; encourage the return to work of injured workers;*
36 *deter and punish frauds of agents, brokers, solicitors, employers and*

1 employees relating to procurement of workers' compensation coverage or the
2 provision or denial of benefits; curtail the rise in medical costs associated
3 with the provision of workers_ compensation benefits; and emphasize that the
4 workers_ compensation system in this state must be returned to a state of
5 economic viability.

6 (C) Any and all case law inconsistent with the purposes set forth
7 herein is specifically annulled."

8

9 SECTION 2. Arkansas Code §11-9-102 is amended to read as follows:

10 "11-9-102. Definitions.

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

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

17 (2) Child means a natural child, a posthumous child, a child legally
18 adopted prior to injury of the employee, a stepchild, an acknowledged
19 illegitimate child of the deceased or spouse of the deceased, and a foster
20 child;

21 (3) Commission means the Workers_ Compensation Commission;

22 (4) Insurance Commissioner means the Insurance Commissioner of the
23 State of Arkansas;

24 (5) (A) (1) Compensable Injury means:

25 (a) An accidental injury causing internal or external physical
26 harm to the body, or accidental injury to prosthetic appliances, including
27 eyeglasses, contact lenses or hearing aids, arising out of and in the course
28 of employment and which, requires medical services or results in disability or
29 death. An injury is accidental only if it is caused by a specific incident
30 and is identifiable by time and place of occurrence.

31 (b) An injury causing internal or external physical harm to the
32 body, and arising out of and in the course of employment if it is not caused
33 by a specific incident or is not identifiable by time and place of occurrence,
34 if the injury is:

35 (i) caused by rapid repetitive motion. Carpal tunnel

1 syndrome is specifically categorized as a compensable injury falling within
2 this definition.

3 (ii) a back injury which is not caused by specific incident
4 or which is not identifiable by time and place of occurrence.

5 (iii) hearing loss which is not caused by specific incident
6 or which is not identifiable by time and place of occurrence.

7 (c) Mental illness as set out in 11-9-113.

8 (d) Heart, cardiovascular injury, accident or disease as set out
9 in 11-9-114.

10 (e) A hernia as set out in 11-9-523.

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

13 (3) Burden of proof

14 The burden of proof of a compensable injury shall be on the employee and
15 shall be as follows:

16 (a) for injuries falling within the definition of compensable
17 injury under paragraph 5(A)(1)(a) the burden of proof shall be a preponderance
18 of the evidence.

19 (b) for injuries falling within the definition of compensable
20 injury under paragraph 5(A)(1)(b) the burden of proof shall be by a
21 preponderance of the evidence and the resultant condition is compensable only
22 if the alleged compensable injury is the major cause of the disability or need
23 for treatment.

24 (4) Benefits

25 (a) When an employee is determined to have a compensable injury,
26 the employee is entitled to medical and temporary disability as provided by
27 Arkansas Workers_ Compensation Law.

28 (b) Permanent benefits shall be awarded only upon a determination
29 that the compensable injury was the major cause of the disability or
30 impairment. If any compensable injury combines with a pre-existing disease or
31 condition or the natural process of aging to cause or prolong disability or a
32 need for treatment, permanent benefits shall be payable for the resultant
33 condition only if the compensable injury is the major cause of the permanent
34 disability or need for treatment.

35 (c) Under 5(A)(4) benefits shall not be payable for a condition

1 which results from a non-work related independent intervening cause following
2 a compensable injury which causes or prolongs disability or a need for
3 treatment. A non-work related independent intervening cause does not require
4 negligence or recklessness on the part of a claimant.

5 (d) Nothing in this section shall limit the payment of
6 rehabilitation benefits or benefits for disfigurement as set forth in this
7 act.

8 (B) Compensable injury does not include:

9 (i) Injury to any active participant in assaults or combats
10 which, although they may occur in the workplace, are the result of
11 non-employment-related hostility or animus of one, both, or all of the
12 combatants, and which said assault or combat amounts to a deviation from
13 customary duties; further, except for innocent victims, injuries caused by
14 horseplay shall not be considered to be compensable injuries;

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

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

21 (iv) Injury where the accident was substantially occasioned by
22 the use of alcohol, illegal drugs or prescription drugs used in contravention
23 of physician's orders. The presence of alcohol, illegal drugs or prescription
24 drugs used in contravention of a physician's orders shall create a rebuttable
25 presumption that the injury or accident was substantially occasioned by the
26 use of alcohol, illegal drugs or prescription drugs used in contravention of
27 physician's orders; every employee is deemed by his performance of services to
28 have impliedly consented to reasonable and responsible testing by properly
29 trained medical or law enforcement personnel for the presence of any of the
30 aforementioned substances in the employee's body; an employee shall not be
31 entitled to compensation unless it is proved by a preponderance of the
32 evidence that the alcohol, illegal drugs or prescription drugs utilized in
33 contravention of the physician's orders did not substantially occasion the
34 injury or accident.

35 (C) Any and all prior decisions by the Commission and the Courts

1 inconsistent with the definition of compensable injury as herein set forth are
2 hereby specifically annulled, repealed, and held for naught.

3 (D) The definition of compensable injury as set forth hereinabove
4 shall not be deemed to limit or abrogate the right to recover for mental
5 injuries as set forth in Arkansas Code §11-9-113 or occupational diseases as
6 hereinafter set forth at Arkansas Code §11-9-601.

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

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

12 (8) Department means the Arkansas Insurance Department;

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

16 (10) Employee means any person, including a minor, whether lawfully
17 or unlawfully employed in the service of an employer under any contract of
18 hire or apprenticeship, written or oral, expressed or implied; but excluding
19 one whose employment is casual and not in the course of the trade, business,
20 profession, or occupation of his employer, and excluding one who is required
21 to perform work for a municipality, county or the state or federal government
22 upon being convicted of a criminal offense or while incarcerated. The term
23 employee shall also include a sole proprietor or a partner who devotes full
24 time to the proprietorship or partnership. Further, however, it is to be
25 understood that any sole proprietor or partner of a partnership who desires
26 not to be included in the definition of employee may file for and receive a
27 Certification of Non-Coverage Under the Workers' Compensation Act from the
28 commission and thereafter, or until he or they elect(s) otherwise, be
29 conclusively presumed not to be an employee for purposes of the act. No
30 election by sole proprietor or partnership under this section shall affect the
31 rights or the coverage under this act of any employees of those sole
32 proprietors or partners. Any reference to an employee who has been injured,
33 when that employee is dead, shall also include his legal representative,
34 dependents, and other persons to whom compensation may be payable;

35 (11) Employer means any individual, partnership, association, or

1 corporation carrying on any employment, the receiver or trustee of the same,
2 or the legal representative of a deceased employer;

3 (12) Employment means:

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

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

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

12 (iii) Agricultural farm labor;

13 (iv) The State of Arkansas and each of the political
14 subdivisions thereof, except as provided by §§ 6-17-1401 - 6-17-1405,
15 14-26-101 - 14-26-104, 14-60-101 - 14-60-104, 19-10-101 - 19-10-103, 19-10-202
16 - 19-10-210, 19-10-401 - 19-10-406, and 21-5-601 - 21-5-610;

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

20 (vi) A person performing services for any non-profit
21 religious, charitable or relief organization;

22 (vii) Any person engaged in the vending, selling, offering
23 for sale, or delivery directly to the general public of any newspapers,
24 magazines, or periodicals, or any person acting as sales agent or distributor
25 as an independent contractor of or for any newspaper, magazine, or periodical;

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

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

30 (D) Every employment in which one (1) or more employees are
31 employed by a subcontractor.

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

34 (14) 'Major cause' means more than fifty percent (50%) of the cause. A
35 finding of major cause shall be established according to the preponderance of

1 the evidence;

2 (15) *_Medical services_ means those services specified in §11-9-508;*

3 (16) *_Objective findings_ are those findings which cannot come under the*
4 *voluntary control of the patient. When determining physical or anatomical*
5 *impairment, neither a physician (or any other medical provider) nor an*
6 *Administrative Law Judge, the Workers' Compensation Commission or the Courts*
7 *may consider complaints of pain; for the purpose of making physical or*
8 *anatomical impairment ratings to the spine, straight leg raising tests or*
9 *range of motion tests shall not be considered objective findings. Medical*
10 *opinions addressing compensability and permanent impairment must be stated*
11 *within a reasonable degree of medical certainty;*

12 (17) *_State average weekly wage_ means the state average weekly wage*
13 *determined annually by the Director of the Department of Labor in the*
14 *preceding calendar year pursuant to §11-10-502. If for any reason, the*
15 *determination is not available, the commission shall determine the wage*
16 *annually, after reasonable investigation and public hearing;*

17 (18) *_Time of accident_ or _date of accident_ means the time or date of*
18 *the occurrence of the accidental incident from which compensable injury,*
19 *disability, or death results;*

20 (19) *_Wages_ means the money rate at which the service rendered is*
21 *recompensed under the contract of hiring in force at the time of the accident*
22 *including reasonable value of board, rent, housing, lodging, or similar*
23 *advantage received from the employer and includes the amount of tips required*
24 *to be reported by the employer pursuant to section 6053 of the Internal*
25 *Revenue Code of 1954, as amended, and the regulations promulgated pursuant*
26 *thereto, or the amount of actual tips reported, whichever amount is greater;*

27 (20) *_Widow_ shall include only the decedent's legal wife, living with*
28 *or dependent for support upon him at the time of his death;*

29 (21) *_Widower_ shall include only the decedent's legal husband, living*
30 *with or dependent for support upon her at the time of her death."*

31

32 SECTION 3. Arkansas Code §11-9-707(4) is hereby repealed.

33

34 SECTION 4. Arkansas Code §11-9-105(a) is amended to read as follows:

35 "(a) The rights and remedies granted to an employee subject to the

1 provisions of this chapter, on account of injury or death, shall be exclusive
2 of all other rights and remedies of the employee, his legal representative,
3 dependents, next of kin, or anyone otherwise entitled to recover damages from
4 the employer, or any principal, officer, director, stockholder, or partner
5 acting in their capacity as an employer, or prime contractor of the employer,
6 on account of the injury or death, and the negligent acts of a co-employee
7 shall not be imputed to the employer. No role, capacity, or persona of any
8 employer, principal, officer, director or stockholder other than that existing
9 in the role of employer of the employee shall be relevant for consideration
10 for purposes of the act, and the remedies and rights provided by this chapter
11 shall in fact be exclusive regardless of the multiple roles, capacities or
12 personas the employer may be deemed to have."

13

14 SECTION 5. Arkansas Code §11-9-106 is amended to read as follows:

15 "11-9-106. Penalties for misrepresentation.

16 (a) Any person or entity who willfully and knowingly makes any material
17 false statement or representation for the purpose of obtaining any benefit or
18 payment, or for the purpose of defeating or wrongfully increasing or
19 wrongfully decreasing any claim for benefit or payment or obtaining or
20 avoiding workers' compensation coverage or avoiding payment of the proper
21 insurance premium (or who aids and abets for either of said purposes), under
22 this chapter shall be guilty of a Class D felony.

23 (b) A copy of subsection (a) of this section shall be placed on all
24 forms prescribed by the commission for the use of injured employees claiming
25 benefits, and for the use of employers in responding to such employees'
26 claims, under the Arkansas Workers' Compensation Law, §11-9-101 et seq.

27 (c) Where the commission or the insurance commissioner finds that false
28 or misleading statements or representations were made willfully and knowingly
29 for the purpose of obtaining benefits or payments, or for the purpose of
30 obtaining, wrongfully increasing, wrongfully decreasing or defeating any claim
31 for benefit or payment or obtaining or avoiding workers' compensation coverage
32 or avoiding payment of the proper insurance premium, under this chapter, the
33 chairman of the commission and/or the insurance commissioner shall refer the
34 matter for appropriate action to the prosecuting attorney of the district
35 where the original hearing was held.

1 (d) (1) There shall be established within the Arkansas Insurance
2 Department a Workers_ Compensation Fraud Investigation Unit_, funded by the
3 Workers_ Compensation Commission, which will be headed and supervised by a
4 director who shall have no fewer than three (3) years experience in law
5 enforcement, or alternatively a law degree, who shall, in turn report to and
6 be subject to the supervision of the Insurance Commissioner. The Workers_
7 Compensation Fraud Investigation Unit herein designated will specifically deal
8 only with Workers_ Compensation Fraud. Such employees hired to pursue the
9 purposes of the Workers_ Compensation Fraud Investigation Unit will be
10 utilized solely for workers_ compensation investigation and no other purposes.

11 (2) The Insurance Commissioner, his deputies and assistants and
12 the fraud director and his deputy shall be vested with the power of enforcing
13 this section and to render more effective the disclosure and apprehension of
14 persons or entities who abuse the workers_ compensation system as established
15 by the General Assembly by making false or misleading statements for the
16 purpose of either obtaining, wrongfully increasing, wrongfully decreasing or
17 defeating the payment of benefits or obtaining or avoiding workers'
18 compensation coverage or avoiding payment of the proper insurance premium.

19 (3) It shall be the duty of the Workers_ Compensation Fraud
20 Investigation Unit to assist the Insurance Commissioner and the department in
21 the performance of their duties, and further, to:

22 (A) Determine the identity of either carriers, employers
23 or employees who, within the State of Arkansas have violated the provisions of
24 A.C.A. 11-9-409 and subdivisions (a), (b) and/or (c) of this section, and to
25 report same to the Workers_ Compensation Commission and to the Insurance
26 Commissioner, who shall, in turn, be responsible for reporting same to the
27 prosecuting attorney of the district in which the offender resides.

28 (B) With respect to the subject of any investigation or
29 hearing being conducted by the Workers_ Compensation Commission, the Insurance
30 Commissioner, his deputies and assistants, and the director and his deputies
31 shall have the power of subpoena and may subpoena witnesses and administer
32 oaths or affirmations and examine any individual under oath and may require
33 and compel the production of records, books, papers, contracts and other
34 documents.

35 (4) Witness fees, mileage, and the actual expense necessarily

1 incurred in securing attendance of witnesses and their testimony shall be
2 itemized and shall be paid by the person being examined or investigated if, in
3 the proceedings in which the witness is called, the person is found to have
4 been in violation of the law, or paid by the person, if other than the
5 Workers_ Compensation Commission, Insurance Commissioner or fraud director, at
6 whose request the hearing is held. In addition, the prevailing party shall be
7 entitled to recover costs and a reasonable attorney's fee payable from the
8 fine; provided however, if the employee is the nonprevailing party, the
9 attorney's fee and costs shall, at the election of the employer, be paid by
10 the employee or deducted from future worker's compensation benefits.

11 (5) Subpoenas of witnesses shall be served in the same manner as
12 if issued by a circuit court.

13 (A) If any individual fails to obey a subpoena issued and
14 served pursuant to this section with respect to any matter concerning which he
15 may be lawfully interrogated, upon application of the Insurance Commissioner
16 or Fraud Director, the circuit court of the county in which is pending the
17 proceeding at which the individual was required to appear, may issue an order
18 requiring the individual to comply with the subpoena and to testify.

19 (B) Any failure to obey the order of the court may be
20 punished by the court as a contempt thereof.

21 (6) If any person has refused, in connection with an
22 investigation by the fraud director, to be examined under oath concerning his
23 affairs, then the Fraud Director is authorized to conduct and enforce by all
24 appropriate and available means any examination under oath in any state or
25 territory of the United States to which any officer, director, or manager may
26 then presently be to the full extent permitted by the laws of the state or
27 territory.

28 (7) Any person testifying falsely under oath or affirmation in
29 this state as to any matter material to any investigation or hearing
30 conducted, pursuant, hereto or any workers_ compensation hearing shall, upon
31 conviction be guilty of perjury and punished accordingly.

32 (8) Every carrier, or employer who has reason to suspect that a
33 violation of A.C.A. 11-9-106(a) has occurred shall be required to report all
34 pertinent matters relating thereto to the Workers_ Compensation Fraud
35 Investigation Unit. No such carrier shall be liable to any employer or

1 employee for any such report, and no employer shall be liable to any employee
2 for such a report unless they knowingly and intentionally include false
3 information. Any such carrier or employer who knowingly and intentionally
4 fails to report any such violation shall be guilty of a misdemeanor and on
5 conviction shall be punished by fine not to exceed one thousand dollars
6 (\$1,000) or by imprisonment, for a period not to exceed one (1) year, or by
7 both fine and imprisonment; although not mandated to report suspected
8 violations of A.C.A. 11-9-106(a) by an employer or employee, any employee who
9 does make such a report shall not be liable to the employer or employee whose
10 suspected violations he has reported.

11 (9) For the purpose of imposing criminal sanctions or a fine for
12 violation of the duties of this act, the prosecuting attorney shall have the
13 right and discretion to proceed against any person or organization responsible
14 for such violations, both organizational and individual liability being
15 intended by this act. Nothing herein shall be deemed to create a civil cause
16 of action.

17 (10) The prosecuting attorney of the district where the original
18 hearing is held and to whom a suspected violation of A.C.A. 11-9-106(a), 11-9-
19 402(c), and 11-9-406 has been referred shall, for the purpose of assisting him
20 in such prosecutions, have the authority to appoint as special assistant
21 prosecuting attorneys licensed attorneys at law in the employment of the
22 Insurance Department Workers_ Compensation Fraud Investigation Unit. Such
23 special assistant prosecuting attorneys shall, for the purpose of the
24 prosecutions to which they are assigned, be responsible to and report to the
25 prosecuting attorney.

26 (11) The Insurance Commissioner, with the cooperation and
27 assistance of the Workers_ Compensation Commission, is authorized to establish
28 such rules and regulations as may be necessary to carry out the provisions of
29 this section.

30 (12) Notwithstanding any other provision of law, it is the
31 specific intent of this section that active investigatory files as maintained
32 by the Insurance Department and by the Workers_ Compensation Fraud
33 Investigation Unit be deemed confidential and privileged and not be made open
34 to the public until the matter under investigation is closed by the Fraud
35 Director with the consent of the Insurance Commissioner.

1 (13) It is to be understood that any person or entity with whom
2 any person identified in section 11-9-106(a) hereinabove has conspired to
3 achieve the proscribed ends shall, by reason of such conspiracy, be guilty as
4 a principal of a Class D felony."

5

6 SECTION 6. Arkansas Code Ann. 11-9-107 is amended to read as follows:

7 "11-9-107. Penalties for discrimination for filing claim.

8 Any employer who willfully discriminates in regard to the hiring or
9 tenure of work or any term or condition of work of any individual on account
10 of the individual_s claim for benefits under this chapter, or who in any
11 manner obstructs or impedes the filing of claims for benefits under this
12 chapter shall be subject to a fine of up to ten thousand dollars (\$10,000) as
13 determined by the Workers_ Compensation Commission. This fine shall be
14 payable to the Workers_ Compensation Commission Second Injury Fund and paid by
15 the employer and not by the carrier. In addition, the prevailing party shall
16 be entitled to recover costs and a reasonable attorney_s fee payable from the
17 fine; provided however, if the employee is the nonprevailing party, the
18 attorney_s fee and costs shall, at the election of the employer, be paid by
19 the employee or deducted from future workers_ compensation benefits. The
20 employer may also be guilty of a Class D felony. This section shall not be
21 construed as establishing an exception to the _employment at will doctrine_.
22 A purpose of this section is to preserve the exclusive remedy doctrine and
23 specifically annul any case law inconsistent herewith, including but not
24 necessarily limited to: Wal Mart Stores, Inc., vs. Baysinger, 306 Ark.
25 239,812 SW2d 463 (1991); Mapco, Inc. vs. Paine, 306 Ark. 198, 812 SW2d 483 2d
26 (1991); and Thomas vs. Valmac Industries, 306 Ark. 228, 812 SWd 673 (1991)."

27

28 SECTION 7. Arkansas Code Section 11-9-109 is amended to read as
29 follows:

30 "11-9-109. Agreement to pay premium void.

31 (a) No agreement by an employee to pay any portion of the premium paid
32 by his employer to a carrier or to contribute to a safety program as provided
33 under Section 13 of this act, a benefit fund or department maintained by the
34 employer for the purpose of providing compensation or medical services and
35 supplies as required by this chapter shall be valid.

1 (b) Any employer who makes a deduction for those purposes from the pay
2 of any employee entitled to the benefits of this chapter shall be guilty of a
3 Class D felony."

4

5 SECTION 8. Subchapter 1 of Chapter 9 of Title 11 of the Arkansas Code
6 is amended by adding three new sections at the end thereof to read as follows:

7 "11-9-113. (a) A mental injury or illness is not a compensable injury
8 unless it is caused by physical injury to the employee's body and shall not be
9 considered an injury arising out of and in the course of employment or
10 compensable unless it is demonstrated by a preponderance of the evidence;
11 provided, however, that this physical injury limitation shall not apply to any
12 victim of a crime of violence. No mental injury or illness under this section
13 shall be compensable unless it is also diagnosed by a licensed psychiatrist or
14 psychologist and the diagnosis of the condition meets the criteria established
15 in the most current issue of the Diagnostic and Statistical Manual of Mental
16 Disorders.

17 (b) Notwithstanding any other provision of this chapter, where a claim
18 is by reason of mental injury or illness the employee shall be limited to
19 twenty-six (26) weeks of disability benefits. In case death results directly
20 from the mental injury or illness within a period of one (1) year,
21 compensation shall be paid the dependents as provided in other death cases
22 under this chapter. Death directly or indirectly related to the mental injury
23 or illness occurring one (1) year or more from the incident resulting in the
24 mental injury or illness shall not be a compensable injury.

25 11-9-114. (a) A cardiovascular, coronary, pulmonary, respiratory or
26 cerebrovascular accident, or myocardial infarction causing injury, illness or
27 death is a compensable injury only if in relation to other factors
28 contributing to the physical harm an accident is the major cause of the
29 physical harm;

30 (b) An injury or disease included in subsection (a) shall not be deemed
31 to be a compensable injury unless it is shown that the exertion of the work
32 necessary to precipitate the disability or death was extraordinary and unusual
33 in comparison to the employee's usual work in the course of the employee's
34 regular employment, or alternately, that some unusual and unpredicted incident
35 occurred which is found to have been the major cause of the physical harm.

1 Stress (physical or mental) shall not be considered in determining whether the
2 employee or claimant has met his burden of proof."

3

4 SECTION 9. Arkansas Code §11-9-401(a) is hereby amended to read as
5 follows:

6 "(a) (1) (A) Every employer should secure compensation to its employees
7 and pay or provide compensation for their disability or death from compensable
8 injury arising out of and in the course of employment without regard to fault
9 as a cause of the injury.

10 (B) There shall be no liability for compensation under this chapter
11 where the injury or death was substantially occasioned by the willful
12 intention of the injured employee to bring about such compensable injury or
13 death."

14

15 SECTION 10. Arkansas Code §11-9-402 is amended to read as follows:

16 "11-9-402. Liability of prime contractors and subcontractors - Sole
17 proprietorships or partnerships.

18 (a) Where a subcontractor fails to secure compensation required by this
19 chapter, the prime contractor shall be liable for compensation to the
20 employees of the subcontractor.

21 (b) (1) Any contractor or his insurance carrier who shall become
22 liable for the payment of compensation on account of injury to or death of an
23 employee of his subcontractor may recover from the subcontractor the amount of
24 the compensation paid or for which liability is incurred.

25 (2) The claim for the recovery shall constitute a lien against
26 any moneys due or to become due to the subcontractor from the prime
27 contractor.

28 (3) A claim for recovery, however, shall not affect the right of
29 the injured employee or the dependents of the deceased employee to recover
30 compensation due from the prime contractor or his insurance carrier.

31 (c) (1) When a sole proprietorship or partnership fails to elect to
32 cover the sole proprietor or partners under this chapter, the prime contractor
33 is not liable under this chapter for injuries sustained by the sole proprietor
34 or partners if the sole proprietor or partners are not employees of the prime
35 contractor. A sole proprietor or the partners of a partnership who do not

1 elect to be covered by the Workers_ Compensation Law and be deemed _employees_
2 thereunder and who deliver to the prime contractor a _Certificate of
3 Non-Coverage_ issued by the Workers' Compensation Commission shall be
4 conclusively presumed not to be covered by the law or to be _employees_ of the
5 prime contractor; this provision shall not affect the rights or coverage of
6 any employees of the sole proprietor or of the partnership.

7 (2) Furthermore, the prime contractor's insurance carrier is not
8 liable for injuries to the sole proprietor or partners described above, who
9 have provided a Certification of Non-Coverage, and the carrier shall not
10 include compensation paid by the prime contractor to the sole proprietor or
11 partners described above in computing the insurance premium for the prime
12 contractor. Any prime contractor who, after being presented with a
13 Certification of Non-Coverage by a sole proprietor or partnership, nonetheless
14 compels the sole proprietorship or partnership to pay or contribute to
15 workers_ compensation coverage of that sole proprietor or partnership shall be
16 guilty of a Class D felony; further, any prime contractor who compels a sole
17 proprietor or partnership to obtain a Certification of Non-Coverage when the
18 sole proprietor or partnership does not desire to do so, is guilty of a Class
19 D felony."

20

21 SECTION 11. Arkansas Code §11-9-406 is amended to read as follows:

22 "11-9-406. Failure to secure payment of compensation - Penalty.

23 (a) Any employer required to secure the payment of compensation under
24 this chapter who fails to secure compensation shall be subject to a fine of up
25 to ten thousand dollars (\$10,000) as determined by Workers' Compensation
26 Commission payable to the Death and Permanent Total Disability Trust Fund or
27 be guilty of a Class D felony. This subsection shall not affect any other
28 liability of the employer under this act.

29 (b) (1) Whenever the commission has reason to believe that any
30 employer required to secure the payment of compensation under this chapter has
31 failed to do so, the commission shall serve upon such employer a proposed
32 order declaring the employer to be in violation of this chapter and containing
33 the amount, if any, of the civil penalty to be assessed against the employer
34 pursuant to subsection (5) of this section.

35 (2) An employer may contest a proposed order of the commission

1 issued pursuant to subsection (b) of this section by filing with the
2 commission, within twenty (20) days of receipt of the proposed order, a
3 written request for a hearing. If a written request for hearing is not filed
4 with the commission within this time, the proposed order, proposed penalty or
5 both shall be a final order of the commission and shall not be subject to
6 further review by any court. Such a request for a hearing need not be in any
7 particular form, but shall specify the grounds upon which the person contests
8 the proposed order, the proposed assessment or both. A proposed order by the
9 commission pursuant to this section is prima facie correct, and the burden is
10 upon the employer to prove that the proposed order is incorrect.

11 (3) If the employer alleges that a carrier has contracted to
12 provide it workers' compensation insurance coverage for the period in
13 question, the employer shall include such allegation in its request for
14 hearing and shall name the carrier. The commission shall promptly notify such
15 carrier of the employer's allegation and of the date of hearing. The carrier
16 shall promptly, and no later than five (5) days prior to the hearing, respond
17 in writing to the employer's allegation by providing evidence of coverage for
18 the period in question or by affirmatively denying the employer's allegation.

19 (4) Hearings conducted under this section shall proceed as
20 provided in §§ 11-9-704 - 11-9-711.

21 (5) The Commission may assess a fine against an employer who
22 fails to secure the payment of compensation in an amount up to one thousand
23 dollars (\$1,000) per day of violation payable to the Death and Permanent Total
24 Disability Trust Fund.

25 (6) If an employer fails to secure the payment of compensation or
26 pay any civil penalty assessed thereagainst after an order issued pursuant to
27 this section has become final by operation of law or upon appeal, the
28 Commission may petition the Chancery Court of Pulaski County or County where
29 the employer's principal place of business is located for an order enjoining
30 the employer from engaging in further employment until such time as the
31 employer secures the payment of compensation and/or makes full payment of all
32 civil penalties."

33

34 SECTION 12. Arkansas Code §11-9-408 is amended to read as follows:

35 "11-9-408. Insurance policies.

1 (a) Contents. Every policy or contract of insurance issued by a
2 carrier to an employer to secure the payment of compensation under this
3 chapter shall contain:

4 (1) Provisions that identify the insured employer and either
5 identify each covered employee or describe covered employees by class or type
6 of labor performed and the estimated number of employees of each such class or
7 type. No single policy of workers' compensation insurance may be issued to
8 any group of employers who are unaffiliated with one another in terms of
9 ownership, control, or right to participate in the profits of the affiliated
10 enterprises;

11 (2) Provisions that insolvency or bankruptcy of the employer or
12 discharge therein shall not relieve the carrier from payment of compensation
13 for compensable injuries sustained by an employee during the term of the
14 policy or contract;

15 (3) The agreement of the carrier that it will promptly pay to the
16 person entitled to compensation every installment of compensation that may be
17 awarded or agreed upon and that this obligation shall not be affected by any
18 default of the employer or by any default in the giving of any notice required
19 by the policy or otherwise. The agreement shall be construed to be a direct
20 obligation by the carrier to the person entitled to compensation, enforceable
21 in that person's name; and

22 (4) Such other provisions as the department allows or requires
23 carriers to include in workers' compensation policies as otherwise provided at
24 Arkansas Code §23-67-101 et seq.

25 (b) Cancellation.

26 (1) An employer may cancel coverage with a carrier by giving the
27 carrier at least thirty (30) days notice, unless a shorter period is permitted
28 under subdivision (B) of this subsection.

29 (A) Cancellation of coverage is effective at 12:01 a.m.
30 thirty (30) days after the date the cancellation notice is received by the
31 carrier, unless a later date is specified in the notice to the carrier.

32 (B) An employer may cancel coverage effective less than
33 thirty (30) days after written notice is received by the carrier where the
34 employer obtains other coverage or becomes a self-insurer. A cancellation
35 under this subdivision is effective immediately upon the effective date of the

1 other coverage or upon authorization as a self-insurer.

2 (2) A carrier shall not cancel coverage issued to an employer
3 under this chapter prior to the date specified for expiration in the policy or
4 contract or until at least thirty (30) days have elapsed after a notice of
5 cancellation has been mailed to the commission and to the employer, or until
6 ten (10) days have elapsed after the notice has been mailed to the employer
7 and to the commission if the cancellation is for nonpayment of premium. A
8 notice of cancellation from the carrier shall state the hour and date that
9 cancellation is effective. However, if the employer procures other insurance
10 within the notice period, the effective date of the new policy shall be the
11 cancellation date of the old policy.

12 (3) Cancellation of coverage by an employer or a carrier shall in
13 no way limit liability that was incurred under the policy or contract prior to
14 the effective date of cancellation.

15 (c) Coverage. No policy or contract of insurance shall be issued
16 against liability under this chapter unless the policy or contract covers the
17 entire liability of the employer; _split coverage_ whereby some employees of
18 an employer are insured by one carrier and other employees are insured by
19 another carrier (or by the Workers Compensation Insurance Plan or a plan of
20 self insurance) is expressly prohibited; except for (i) a policy issued in
21 accordance with Arkansas Code §23-92-315(3) so long as all employees
22 performing services for a client are covered under the same policy, contract
23 or plan, or (ii) a policy issued covering the liability of an employer or of
24 multiple employers as to specific jobs, ventures, contracts or undertakings
25 but only if such policy meets with the reasonable satisfaction and approval of
26 the commissioner that such policy is in the best interest of the employers and
27 the employees concerned and does not unduly or improperly affect the
28 continuity of workers' compensation coverage by seriously and negatively
29 affecting other carriers and agents with outstanding policies issued to any of
30 the employers in issue. As to any questions of liability between the employer
31 and the carrier, the terms of the policy or contract shall govern.

32 (d) Under such rules and regulations as may be adopted by the Insurance
33 Commissioner, and notwithstanding other provisions of this chapter, the
34 commissioner may certify five (5) or more employers as an insurance group
35 which shall be considered an employer for the purposes of this chapter."

1

2 SECTION 13. Arkansas Code §11-9-409, repealed by Section 4 of Act 561
3 of 1991, is reenacted to read as follows:

4 "11-9-409. Safety and health loss control consultative services.

5 (1) WORKERS' HEALTH AND SAFETY.

6 (a) The Arkansas Workers_ Compensation Commission shall
7 establish a Workers_ Health and Safety Division hereinafter referred to as
8 Division.

9 (b) The Division shall collect and serve as a repository for
10 statistical information on workers' health and safety. In cooperation and
11 with the assistance of the Arkansas Department of Labor and the Arkansas
12 Insurance Department, the Division shall analyze and use the information to
13 identify and assign priorities to safety needs and to better coordinate the
14 safety services provided by public or private organizations, including
15 insurance carriers. In cooperation and with the assistance of the Arkansas
16 Department of Labor and the Arkansas Insurance Department, the Division shall
17 promote workers' health and safety through educational programs and other
18 innovative programs developed by the Division.

19 (c) In cooperation and with the assistance of the Arkansas Department
20 of Labor and the Arkansas Insurance Department, the Division shall coordinate
21 or supervise the collection of information relating to job safety.

22 (d) The Chairman of the Workers' Compensation Commission, the Director
23 of the Arkansas Department of Labor and the Commissioner of the Arkansas
24 Insurance Commission shall function as an advisory committee to resolve
25 questions regarding duplication of efforts, assignment of new programs and
26 other matters that need cooperation and coordination.

27 (e) In cooperation and with the assistance of the Arkansas Department
28 of Labor and the Arkansas Insurance Department, the Division shall publish or
29 procure and issue educational books, pamphlets, brochures, films, videotapes,
30 and other informational and educational material. Specific educational
31 material shall be directed to high-risk industries and jobs and shall
32 specifically address means and methods of avoiding high frequency, but
33 preventable, workers' injuries. Other educational material shall be directed
34 to business and industry generally and shall specifically address means and
35 methods of avoiding common workers' injuries. Specific decisions as to what

1 issues and problems should be addressed by such information shall be made by
2 the Division in cooperation and with the assistance of the Arkansas Department
3 of Labor and the Arkansas Insurance Department, with Commission approval after
4 assigning appropriate priorities based on frequency of injuries, degree of
5 hazard, severity of injuries, and similar considerations. Such educational
6 materials shall include specific references to the requirements of state and
7 federal laws and regulations, to recommendations and practices of business,
8 industry, and trade associations, and where needed, to recommended work
9 practices based on recommendations made by the Division in cooperation and
10 with the assistance of the Arkansas Department of Labor and the Arkansas
11 Insurance Department, for the prevention of injury.

12 (f) In cooperation and with the assistance of the Arkansas Department
13 of Labor and the Arkansas Insurance Department, the Division shall cooperate
14 with employers and employees to develop means and methods of educating
15 employees and employers with regard to workplace safety.

16 (g) In cooperation and with the assistance of the Arkansas Department
17 of Labor and the Arkansas Insurance Department, the Division shall encourage
18 other entities to develop safety courses, safety plans, and safety programs.

19 (h) In cooperation and with the assistance of the Arkansas Department
20 of Labor and the Arkansas Insurance Department, the Division shall certify
21 safe employers to provide peer review safety programs.

22 (i) In cooperation and with the assistance of the Arkansas Department
23 of Labor and the Arkansas Insurance Department, the Division shall advise
24 insurance carrier loss control service organizations of hazard
25 classifications, specific employers, industries, occupations, or geographic
26 regions to which loss control services should be directed or of the identity
27 and types of injuries or occupational diseases for prevention of the same to
28 which loss control services should be directed and shall advise insurance
29 carrier loss control service organizations of safety needs and priorities
30 recommended by the Division in cooperation and with the assistance of the
31 Arkansas Department of Labor and the Arkansas Insurance Department.

32 (2) JOB SAFETY INFORMATION SYSTEM.

33 (a) In cooperation and with the assistance of the Arkansas
34 Department of Labor and the Arkansas Insurance Department, the Division shall
35 establish and maintain a job safety information system. In cooperation and

1 with the assistance of the Arkansas Department of Labor and the Arkansas
2 Insurance Department, the Division is authorized, empowered, and directed to
3 obtain from any state agency, data and statistics, including those compiled
4 for the purpose of rate making. The Division shall consult the Arkansas
5 Department of Labor and any other affected state agencies in the design of
6 data information and retrieval systems that will accomplish the mutual
7 purposes of those agencies and of the Division.

8 (b) Employers shall file with the Commission such reports as may be
9 necessary. The Commission shall promulgate rules and prescribe the form and
10 manner of such reports.

11 (c) The job safety information system shall include a comprehensive
12 data base that incorporates all pertinent information relating to each
13 reported injury.

14 (d) The identity of the employee is confidential and may not be
15 disclosed as part of the job safety information system.

16 (3) EXTRA-HAZARDOUS EMPLOYER PROGRAM.

17 (a) In cooperation and with the assistance of the Arkansas Department
18 of Labor and the Arkansas Insurance Department, the Division shall develop a
19 program including injury frequency to identify extra-hazardous employers.
20 The term extra-hazardous employer includes an employer whose injury
21 frequencies substantially exceed those that may reasonably be expected in that
22 employer's business or industry; an employer whose experience modifier is
23 identified by the commission as too high; and, such other employers as may,
24 following a public hearing, be identified as extra hazardous. The Division
25 shall notify each identified extra-hazardous employer and/or the carrier for
26 the employer that the employer has been identified as an extra-hazardous
27 employer.

28 (b) An employer that receives notification under Subsection (3)(a) of
29 this section must obtain a safety consultation within thirty (30) days from
30 the Arkansas Department of Labor, the employer's insurance carrier, or another
31 professional source approved by the Division for that purpose. The safety
32 consultant shall file a written report with the Division and the employer
33 setting out any hazardous conditions or practices identified by the safety
34 consultation.

35 (c) The employer and the consultant shall formulate a specific

1 accident prevention plan which addresses the hazards identified by the
2 consultant. The employer shall comply with the accident prevention plan.

3 (d) The Division may investigate accidents occurring at the worksites
4 of an employer for whom a plan has been formulated under Subsection (c) of
5 this section, and the Division may otherwise monitor the implementation of the
6 accident prevention plan as it finds necessary.

7 (e) Six (6) months after the formulation of an accident prevention
8 plan prescribed by Subsection (c) of this section, the Division shall conduct
9 a follow-up inspection of the employer_s premises. The Division may require
10 the participation of the safety consultant who performed the initial
11 consultation and formulated the safety plan. If the Division determines that
12 the employer has complied with the terms of the accident prevention plan or
13 has implemented other acceptable corrective measures, the Division shall so
14 certify. An employer whom the Division determines has failed or refused to
15 implement the accident prevention plan or other suitable hazard abatement
16 measures is subject to civil penalties as follows: the Commission may assess
17 a civil penalty against an employer who fails or refuses to implement the
18 accident prevention plan or other suitable hazard abatement procedures in an
19 amount up to One Thousand Dollars (\$1,000.00) per day of violation payable to
20 the Death and Permanent Total Disability Trust Fund. Further, the Commission
21 may petition the Chancery Court of Pulaski County or the county where the
22 business is located for an order enjoining the employer from engaging in
23 further employment until such time as the employer implements the prevention
24 plan or abatement measure described above and/or makes payment of all civil
25 penalties.

26 (f) If, at the time of the inspection required under Subsection (e) of
27 this section, the employer continues to exceed the injury frequencies that may
28 reasonably be expected in that employer_s business or industry, the Division
29 shall continue to monitor the safety conditions at the worksite and may
30 formulate additional safety plans reasonably calculated to abate hazards. The
31 employer shall comply with such plans and may be subject to additional
32 penalties for failure to implement the plan or plans.

33 (g) An employer may request a hearing before the full Commission to
34 contest findings made by the Division under this section.

35 (h) The identification as an extra-hazardous employer under this

1 section is not admissible in any judicial proceeding unless the Commission has
2 determined that the employer is not in compliance with this section and that
3 determination has not been reversed or superseded at the time of the event
4 giving rise to the judicial proceeding.

5 (4) ACCIDENT PREVENTION SERVICES.

6 (a) Any insurance company desiring to write workers_ compensation
7 insurance in Arkansas shall maintain or provide accident prevention services
8 as a prerequisite for a license to write such insurance. Such services shall
9 be adequate to furnish accident prevention programs required by the nature of
10 its policyholders_ operations and shall include surveys, recommendations,
11 training programs, consultations, analyses of accident causes, industrial
12 hygiene, and industrial health services to implement the program of accident
13 prevention services.

14 (b) In cooperation and with the assistance of the Arkansas Department
15 of Labor and the Arkansas Insurance Department, the Division shall conduct
16 inspections to determine the adequacy of the accident prevention services
17 required by Subsection (a) of this section at least every two (2) years for
18 each insurance company writing workers' compensation insurance in Arkansas.

19 (c) Notice that services are available to the policyholder from the
20 insurance company must appear in no less than 10-point bold type on the front
21 of each workers_ compensation insurance policy delivered or issued for
22 delivery in the state.

23 (d) At least once each year each insurance company writing workers'
24 compensation insurance in Arkansas must submit to the Division detailed
25 information on the type of accident prevention services offered to that
26 insurance company_s policyholders. The information must include any
27 additional information required by the Commission.

28 (e) If the insurance company does not maintain or provide the accident
29 prevention services required by this section or if the insurance company does
30 not use the services in a reasonable manner to prevent injury to employees of
31 its policyholders, the insurance company may be subjected to the same civil
32 penalties as are assessable and enforceable against employers as set forth
33 above in Subsection (3)(e) hereof and shall be subject to suspension or
34 revocation of license to do business in this state by the Insurance
35 Commissioner.

1 (f) The Commission shall employ the qualified personnel necessary to
2 enforce this section.

3 (5) IMMUNITY FROM CERTAIN LIABILITY. Except as provided in subsection
4 4(e) above, the insurance company, the agent, servant, or employee of the
5 insurance company or self insured employer, or a safety consultant who
6 performs a safety consultation under Section 13 of this Act shall have no
7 liability with respect to any accident based on the allegation that such
8 accident was caused or could have been prevented by a program, inspection, or
9 other activity or service undertaken by the insurance company or self insured
10 employer for the prevention of accidents in connection with operations of the
11 employer; provided, however, this immunity shall not affect the liability of
12 the insurance carrier or self insured employer for compensation or as
13 otherwise provided in this Act.

14 (6) EXCLUSIVE REMEDY. This section does not create an independent
15 cause of action at law or in equity."
16

17 Section 14. Arkansas Code 11-9-410 is amended to read as follows:

18 "11-9-410. Third party liability.

19 (a) Liability unaffected.

20 (1) The making of a claim for compensation against any employer
21 or carrier for the injury or death of an employee shall not affect the right
22 of the employee, or his dependents, to make claim or maintain an action in
23 court against any third party for the injury, but the employer or his carrier
24 shall be entitled to reasonable notice and opportunity to join in the action.
25 If they, or either of them, join in the action, they shall be entitled to a
26 first lien upon two-thirds (2/3) of the net proceeds recovered in the action
27 that remain after the payment of the reasonable costs of collection, for the
28 payment to them of the amount paid and to be paid by them as compensation to
29 the injured employee or his dependents.

30 (2) The commencement of an action by an employee or his
31 dependents against a third party for damages by reason of an injury to which
32 this chapter is applicable, or the adjustment of any claim, shall not affect
33 the rights of the injured employee or his dependents to recover compensation,
34 but any amount recovered by the injured employee or his dependents from a
35 third party shall be applied as follows:

1 (A) reasonable costs of collection shall be deducted;
2 (B) then, in every case, one-third (1/3) of the remainder
3 shall belong to the injured employee or his dependents, as the case may be;
4 (C) the remainder, or so much as is necessary to discharge
5 the actual amount of the liability of the employer and the carrier; and
6 (D) any excess shall belong to the injured employee or his
7 dependents.

8 (b) Subrogation.

9 (1) An employer or carrier liable for compensation under this
10 chapter for the injury or death of an employee shall have the right to
11 maintain an action in tort against any third party responsible for the injury
12 or death. However, employee or the carrier must notify the claimant in
13 writing that the claimant has the right to hire a private attorney to pursue
14 any benefits that the claimant is entitled to in addition to the subrogation
15 interest against any third party responsible for the injury or death.

16 (2) After reasonable notice and opportunity to be represented in
17 the action has been given to the compensation beneficiary, the liability of
18 the third party to the compensation beneficiary shall be determined in the
19 action as well as the third party_s liability to the employer and carrier.

20 (3) After recovery shall be had against the third party, by suit
21 or otherwise, the compensation beneficiary shall be entitled to any amount
22 recovered over and above the amount that the employer and carrier have paid or
23 are liable for in compensation, after deducting reasonable costs of
24 collection. In no event shall the compensation beneficiary be entitled to
25 less than one-third (1/3) of the amount recovered from the third party, after
26 deducting the reasonable cost of collection.

27 (4) An employer or carrier who is liable for compensation under
28 this chapter on account of injury or death of an employee shall be entitled to
29 maintain a third party action against the employer_s uninsured motorist
30 coverage or underinsured motorist coverage. The purpose and intent of this
31 section is to prevent double payment to the employee. Any and all case law
32 inconsistent herewith is specifically annulled.

33 (c) Settlement of claims.

34 (1) Settlement of claims under subsections (a) and (b) of this
35 section must have the approval of the court or of the commission, except that

1 the distribution of that portion of the settlement which represents the
2 compensation payable under this chapter must have the approval of the
3 commission.

4 (2) Where liability is admitted to the injured employee or his
5 dependents by the employer or carrier, the cost of collection may be deducted
6 from that portion of the settlement under subsections (a) or (b) of this
7 section representing compensation, upon direction and approval of the
8 commission.

9 (3) No party shall settle a claim under subsections (a) and (b)
10 of this section without first giving three (3) days_ written notice to all
11 parties with an interest in the claim of the intent to settle. Each party
12 with an interest in a claim under subsections (a) and (b) shall cooperate with
13 all other parties in litigation or settlement of such claims.

14 (4) The purpose and intent of the reenactment of this statute is
15 to annul any and all case law inconsistent herewith."
16

17 SECTION 15. Arkansas Code Section 11-9-501(b) is hereby amended to read
18 as follows:

19 "(b) Compensation payable to an injured employee for disability, other
20 than permanent partial disability as specified in subsection (d) of this
21 section, and compensation payable to surviving dependents of a deceased
22 employee, the total disability rate, shall not exceed sixty-six and two-thirds
23 percent (66 2/3%) of the employee_s average weekly wage with a twenty dollar
24 (\$20.00) per week minimum, subject to the following maximums:

25 (1) For disability or death due to an injury occurring on and
26 after July 1, 1987, through December 31, 1988, the maximum weekly benefits
27 payable shall be one hundred eighty-nine dollars (\$189);

28 (2) For disability or death due to an injury occurring on and
29 after January 1, 1989, through December 31, 1989, the maximum weekly benefits
30 payable shall be sixty-six and two-thirds percent (66 2/3%) of the state
31 average weekly wage;

32 (3) For a disability or death which results from an injury
33 occurring on and after January 1, 1990, the maximum weekly benefit payable
34 shall be seventy percent (70%) of the state average weekly wage;

35 (4) For a disability or death which results from an injury

1 occurring during a calendar year beginning on or after January 1, 1997, the
2 maximum weekly benefit payable shall be eighty-five percent (85%) of the state
3 average weekly wage if and only if the Arkansas insurance commissioner
4 certifies to the Arkansas Workers' Compensation Commission during December
5 1996 that the overall Workers' Compensation insurance rates for Arkansas have
6 decreased by at least ten percent (10%) subsequent to the effective date of
7 this 1993 act;

8 (5) After January 1, 1994, the weekly benefit rate shall be
9 rounded to the nearest whole dollar, i.e., if the actual rate be a dollar
10 amount plus 49 cents or less, the rate for compensation purposes shall be the
11 next lower whole dollar amount; and if the actual rate by a dollar amount plus
12 50 cents or more, then the rate for compensation purposes shall be the next
13 higher whole dollar amount."

14

15 SECTION 16. Arkansas Code 11-9-503 is amended to read as follows:

16 "11-9-503 - Violation of safety provisions.

17 Notwithstanding any other definition of extra-hazardous employer as
18 provided by 11-9-409(3), any employer that fails to utilize the consultative
19 safety services available through the Arkansas Department of Labor, their own
20 insurance carrier or a private safety consultant shall be identified as an
21 extra-hazardous employer if it is established by preponderance of the evidence
22 that an injury or death is caused in substantial part by the failure of an
23 employer to comply with any Arkansas statute or official regulation pertaining
24 to the health or safety of employees or fails to follow safety consultant
25 recommendations, and when so notified the employer shall comply with 11-9-
26 409(3) (b) through (h) provided; if it is established by a preponderance of
27 the evidence that the employee is injured as a result of the employee_s
28 violation of employer_s safety rules or instructions, the provisions of this
29 section shall not apply."

30

31 SECTION 17. Arkansas Code 11-9-505 is amended to read as follows:

32 "11-9-505. Additional compensation - Rehabilitation.

33 (a) Any employer who without reasonable cause refuses to return an
34 employee who is injured in the course of employment to work, where suitable
35 employment is available within the employee_s physical and mental limitations,

1 upon order of the Commission and in addition to other benefits, such employer
2 shall be liable to pay to the employee the difference between benefits
3 received and the average weekly wages lost during the period of such refusal,
4 for a period not exceeding one year. In determining the availability of
5 employment, the continuance in business of the employer shall be considered,
6 and any written rules promulgated by the employer with respect to seniority or
7 the provisions of any collective bargaining agreement with respect to
8 seniority shall control.

9 (b) In addition to benefits otherwise provided for by this chapter, an
10 employee who is entitled to receive compensation benefits for permanent
11 disability and who has not been offered an opportunity to return to work
12 and/or re-employment assistance, shall be paid reasonable expenses of travel
13 and maintenance and other necessary costs of a program of vocational
14 rehabilitation if the Commission finds that the program is reasonable in
15 relation to the disability sustained by the employee. The employer's
16 responsibility for additional payments shall not exceed seventy-two (72)
17 weeks, regardless of the length of the program requested. The employee shall
18 not be required to enter any program of vocational rehabilitation against his
19 consent; however, no employee who waives rehabilitation or refuses to
20 participate in or cooperate for reasonable cause with either an offered
21 program of rehabilitation or job placement assistance shall be entitled to
22 permanent partial disability benefits in excess of the percentage of permanent
23 physical impairment established by objective physical findings. A request for
24 the program, if elected by the claimant, must be filed with the Commission
25 prior to a determination of the amount of permanent disability benefits
26 payable to the employee.

27 (c) This section shall not be construed as creating an exception to
28 the common law regarding employment at will.

29 (d) The purpose and intent of this statute is to place an emphasis on
30 returning the injured worker to work, while still allowing and providing for
31 vocational rehabilitation programs when determined appropriate by the
32 Commission."

33

34 SECTION 18. Arkansas Code §11-9-506 is amended to read as follows:

35 "11-9-506. Limitations on compensation - Recipients of unemployment

1 benefits.

2 Any other provisions of this chapter to the contrary notwithstanding-:

3 (a) No compensation in any amount for temporary total, temporary
4 partial or permanent total disability shall be payable to an injured employee
5 with respect to any week for which the injured employee receives unemployment
6 insurance benefits under the Arkansas Employment Security Act, §11-10-101 et
7 seq. or the unemployment insurance law of any other state, provided, however,
8 if a claim for temporary total disability is controverted and later determined
9 to be compensable, temporary total disability shall be payable to an injured
10 employee with respect to any week for which the injured employee receives
11 unemployment benefits but only to the extent the temporary total disability
12 otherwise payable exceeds such unemployment benefits."

13

14 SECTION 19. Arkansas Code §11-9-508 is amended to read as follows:

15 "11-9-508. Medical services and supplies - Liability of employer.

16 (a) The employer shall promptly provide for an injured employee such
17 medical, surgical, hospital, chiropractic, optometric, podiatric, and nursing
18 service, and medicine, crutches, ambulatory devices, artificial limbs,
19 eyeglasses, contact lenses, hearing aids, and other apparatus as may be
20 reasonably necessary in connection with the injury received by the employee.

21 (b) If the employer fails to provide the medical services set out in
22 subsection (a) of this section within a reasonable time after knowledge of the
23 injury, the Commission may direct that the injured employee obtain the medical
24 service at the expense of the employer, and any emergency treatment afforded
25 the injured employee shall be at the expense of the employer. In no
26 circumstance may an employee, his family, or dependents, be billed or charged
27 for any portion of the cost of providing the benefits to which he is entitled
28 under this chapter.

29 (c) In order to help control the cost of medical benefits, the
30 Commission, on or before July 1, 1994, following a public hearing and with the
31 assistance and cooperation of the Insurance Department, is authorized and
32 directed to establish appropriate rules and regulations to establish and
33 implement a system of managed health care for the State of Arkansas.

34 (d) For the purpose of establishing and implementing a system of
35 managed health care, the Commission is authorized to:

1 (1) Develop rules and regulations for the certification of
2 managed care entities to provide managed care to injured workers;

3 (2) Develop regulations for peer review, service utilization,
4 resolution of medical disputes;

5 (3) Prohibit balanced billing from the employee, employer, or
6 carrier;

7 (4) Establish fees for medical services as provided for in Rule
8 30, and its subsequent amendments. The Commission shall make no distinction
9 in approving fees from different classes of medical service providers or
10 health care providers for provision of the same or essentially similar medical
11 services or health care services as defined herein;

12 (5) Give the employer the right to choose the initial treating
13 physician with the injured employee having the right to petition the
14 commission for a one-time only change of physician to one associated with a
15 managed care entity certified by the Commission or is the regular treating
16 physician of the employee who maintains the employee_s medical records and
17 with whom the employee has a bona fide doctor/patient relationship
18 demonstrated by a history of regular treatment prior to the onset of the
19 compensable injury, but only if the primary care physician agrees to refer the
20 employee to a certified managed care entity for any specialized treatment,
21 including physical therapy and only if such primary care physician agrees to
22 comply with all the rules, terms and conditions regarding services performed
23 by the managed care entity initially chosen by the employer. A petition for
24 change of physician shall be expedited by the commission;

25 (6) Any section or subsection of this act notwithstanding, the
26 injured employee shall have direct access to any optometrist or
27 ophthalmologist medical service provider who agrees to provide services under
28 the rules, terms and conditions regarding services performed by the managed
29 care entity intitally chosen by the employer for the treatment/management of
30 eye injuries or conditions. Such optometric or ophthalmology medical service
31 provider shall be considered a certified provider by the Commission.

32 (7) Any other rules or regulations as may be necessary to carry
33 out the provisions of this section and its purpose of controlling medical
34 costs through the establishment of a managed care system."

35

1 SECTION 20. Arkansas Code §11-9-514 is amended to read as follows:

2 "11-9-514. Medical services and supplies - Change of physician.

3 (a) (1) If the employee selects a physician, the Commission shall not
4 authorize a change of physician unless the employee first establishes to the
5 satisfaction of the Commission that there is a compelling reason or
6 circumstance justifying a change.

7 (2) If the employer selects a physician, the claimant may
8 petition the Commission one (1) time only for a change of physician, and if
9 the Commission approves the change, with or without a hearing, the Commission
10 shall determine the second physician and shall not be bound by recommendations
11 of claimant or respondent. However, if the change desired by the claimant is
12 to a chiropractic physician, optometrist, or podiatrist, the claimant may make
13 the change by giving advance written notification to the employer or carrier.

14 (3) Following establishment of an Arkansas managed care system as
15 provided in Section 11-9-508 Arkansas Code Ann. 11-9-514 (a) (1) and (2) shall
16 become null and void and thereafter: The employer shall have the right to
17 select the initial primary care physician from amongst those associated with
18 certified managed care entities by the Commission as hereinabove provided.
19 The claimant employee, however, may petition the Commission one (1) time only
20 for a change of physician who must also either be associated with a managed
21 care entity certified by the Commission or is the regular treating physician
22 of the employee who maintains the employee_s medical records and with whom the
23 employee has a bona fide doctor/patient relationship demonstrated by a history
24 of regular treatment prior to the onset of the compensable injury, but only if
25 the primary care physician agrees to refer the employee to a certified managed
26 care entity for any specialized treatment, including physical therapy and only
27 if such primary care physician agrees to comply with all the rules, terms and
28 conditions regarding services performed by the managed care entity initially
29 chosen by the employer. A petition for change of physician shall be expedited
30 by the Commission.

31 (b) Treatment or services furnished or prescribed by any physician
32 other than the ones selected according to the foregoing, except emergency
33 treatment, shall be at the claimant_s expense.

34 (c) (1) After being notified of an injury, the employer or insurance
35 carrier shall deliver to the employee, in person or by certified or registered

1 mail, return receipt requested, a copy of a notice, approved or prescribed by
2 the Commission, which explains the employee_s rights and responsibilities
3 concerning change of physician.

4 (2) If, after notice of injury, the employee is not furnished a
5 copy of the notice, the change of physician rules do not apply.

6 (3) Any unauthorized medical expense incurred after the employee
7 has received a copy of the notice shall not be the responsibility of the
8 employer.

9 (d) A request for a hearing on a change of physicians by either the
10 employer or the injured employee shall be given preference on the Commission's
11 docket over all other matters.

12 (e) Cooperation on the part of both the injured employee and the
13 employer in an effort to select another physician is encouraged.

14 (f) When compensability is controverted, subsection (b) of § 11-9-514
15 shall not apply if:

16 (1) The employee requests medical assistance in writing prior to
17 seeking the same as a result of an alleged compensable injury; and

18 (2) The employer refuses to refer the employee to a medical
19 provider within forty-eight (48) hours after such written request as provided
20 above; and

21 (3) The alleged injury is later found to be a compensable
22 injury; and

23 (4) The employer has not made a previous offer of medical
24 treatment.

25 (g) The Commission shall by regulation require the inclusion of the
26 information set forth in subsection (f) on all A-6 forms."

27

28 SECTION 21. Arkansas Code §11-9-516 is amended to read as follows:

29 "11-9-516. Medical services and supplies - Information furnished by
30 provider.

31 (a) Every hospital or other person furnishing the injured employee with
32 medical services shall permit its records to be copied by and shall furnish
33 full written information to the Commission, the Workers_ Compensation Fraud
34 Investigation Unit, the employer, the carrier, and the employee or the
35 employee_s dependents. The reasonable cost of copies as set forth in Rule 30

1 shall be paid by the one requesting them to the health care or medical service
2 provider furnishing them.

3 (b) No person who, in good faith pursuant to subsection (a) of this
4 section or pursuant to rules and regulations established by the Commission who
5 reports medical information shall incur legal liability for the disclosure of
6 such information."

7

8 SECTION 22. Arkansas Code Section 11-9-519 is hereby amended to read as
9 follows:

10 "11-9-519. Compensation for disability - Total disability.

11 (a) In case of total disability, there shall be paid to the injured
12 employee during the continuance of the total disability sixty-six and
13 two-thirds percent (66 2/3%) of his average weekly wage.

14 (b) In the absence of clear and convincing proof to the contrary, the
15 loss of both hands, both arms, both legs, both eyes, or of any two (2) thereof
16 shall constitute permanent total disability.

17 (c) In all other cases, permanent total disability shall be determined
18 in accordance with the facts.

19 (d) No more often than annually the carrier or self-insured employer or
20 Death and Permanent Total Disability Trust Fund may require an injured worker
21 receiving permanent total disability benefits to, as of the date thereof,
22 certify on forms provided by the Workers Compensation Commission that he/she
23 is permanently and totally disabled and not gainfully employed. Notice of
24 such requirement shall be made by certified mail. Failure of the employee to
25 so certify within thirty (30) days after receipt of such notice shall permit
26 the discontinuance of benefits without penalty until otherwise ordered by the
27 Commission.

28 (e) Permanent total disability means inability, because of
29 compensable injury or occupational disease, to earn any meaningful wages in
30 the same or other employment. The burden of proof shall be on the employee to
31 prove inability to earn any meaningful wage in the same or other employment.

32 (f) In considering a claim for permanent disability the Commission and
33 the Courts shall not consider the odd-lot doctrine.

34 (g) Any permanent total disability benefits payable to an injured
35 worker age sixty-five (65) or older shall be reduced in an amount equal to,

1 dollar for dollar, the amount of benefits an injured worker receives or is
2 eligible to receive from a publicly or privately funded retirement or pension
3 plan but shall not be reduced by employee contributions to a privately funded
4 retirement or pension plan. The purpose and intent of this section is to
5 prohibit workers_ compensation from becoming a retirement supplement.

6 (h) On or before July 1, 1994, the Commission, after a public hearing,
7 shall adopt an impairment rating guide to be used in the assessment of
8 anatomical impairment. Said guide shall not include pain as a basis for
9 impairment provided the impairment rating guide adopted by the commission
10 shall become null and void on March 1, 1997 unless re-enacted by the General
11 Assembly."

12

13 SECTION 23. Arkansas Code Section 11-9-521 is hereby amended to read as
14 follows:

15 "11-9-521. Compensation for disability - Scheduled permanent injuries.

16 (a) An employee who sustains a permanent compensable injury scheduled
17 in this section shall receive in addition to compensation for temporary total
18 and temporary partial benefits during the healing period or until the employee
19 returns to work whichever occurs first weekly benefits in the amount of the
20 permanent partial disability rate attributable to the injury, for that period
21 of time set out in the following schedule:

22 (1) Arm amputated at the elbow, or between the elbow and shoulder, two
23 hundred ten (210) weeks;

24 (2) Arm amputated between the elbow and wrist, one hundred fifty-eight
25 (158) weeks;

26 (3) Leg amputated at the knee, or between the knee and the hip, one
27 hundred eighty-four (184) weeks;

28 (4) Leg amputated between the knee and the ankle, one hundred
29 thirty-one (131) weeks;

30 (5) Hand amputated, one hundred fifty-eight (158) weeks;

31 (6) Thumb amputated, sixty-three (63) weeks;

32 (7) First finger amputated, thirty-seven (37) weeks;

33 (8) Second finger amputated, thirty-two (32) weeks;

34 (9) Third finger amputated, twenty-one (21) weeks;

35 (10) Fourth finger amputated, sixteen (16) weeks;

1 (11) Foot amputated, one hundred thirty-one (131) weeks;

2 (12) Great toe amputated, thirty-two (32) weeks;

3 (13) Toe other than great toe amputated, eleven (11) weeks;

4 (14) Eye enucleated, in which there was useful vision, one hundred five
5 (105) weeks;

6 (15) Loss of hearing of one ear, forty-two (42) weeks;

7 (16) Loss of hearing of both ears, one hundred fifty-eight (158) weeks;

8 (17) Loss of one testicle, fifty-three (53) weeks; loss of both
9 testicles, one hundred fifty-eight (158) weeks.

10 (b) Compensation for amputation of the first phalange shall be one-half
11 (1/2) of the compensation for the amputation of the entire digit.

12 Compensation for amputation of more than one (1) phalange of a digit shall be
13 the same as for amputation of the entire digit;

14 (c) Compensation for the permanent loss of eighty percent (80%) or more
15 of the vision of an eye shall be the same as for the loss of an eye. In all
16 cases of permanent loss of vision, the use of corrective lens may be taken
17 into consideration in evaluating the extent of loss of vision;

18 (d) Compensation for amputation or loss of use of two (2) or more
19 digits or one (1) or more phalanges of two (2) or more digits of a hand or a
20 foot may be proportioned to the total loss of use of the hand or the foot
21 occasioned thereby but shall not exceed the compensation for total loss of a
22 hand or a foot;

23 (e) Compensation for permanent total loss of use of a member shall be
24 the same as for amputation of the member;

25 (f) Compensation for permanent partial loss or loss of use of a member
26 shall be for the proportionate loss or loss of use of the member;

27 (g) Any employee suffering a scheduled injury shall not be entitled to
28 permanent partial disability benefits in excess of the percentage of permanent
29 physical impairment set forth above except as otherwise provided in as §
30 11-9-519(b);

31 (h) On or before July 1, 1994, the Commission, after a public hearing,
32 shall adopt an impairment rating guide to be used in the assessment of
33 anatomical impairment. Said guide shall not include pain as a basis for
34 impairment provided the impairment rating guide adopted by the commission
35 shall become null and void on March 1, 1997 unless re-enacted by the General

1 Assembly."

2

3 SECTION 24. Arkansas Code Section 11-9-522 is amended to add
4 subsections (e), (f), and (g), as follows:

5 "(e) In considering a claim for permanent disability the Commission and
6 the Courts shall not consider the odd-lot doctrine.

7 (f) Any permanent partial disability benefits payable to an injured
8 worker age sixty-five (65) or older shall be reduced in an amount equal to,
9 dollar for dollar, the amount of benefits an injured worker received or is
10 eligible to receive from a publicly or privately funded retirement or pension
11 plan but not be reduced by the employee's contributions to a privately funded
12 retirement or pension plan. The purpose and intent of this section is to
13 prohibit workers' compensation from becoming a retirement supplement.

14 (g) On or before July 1, 1994, the Commission, after a public hearing,
15 shall adopt an impairment rating guide to be used in the assessment of
16 anatomical impairment. Said guide shall not include pain as a basis for
17 impairment provided the impairment rating guide adopted by the commission
18 shall become null and void on March 1, 1997 unless re-enacted by the General
19 Assembly."

20

21 SECTION 25. Arkansas Code Section 11-9-527(a) is hereby amended to read
22 as follows:

23 "(a) Funeral Expenses. If death results from an injury occurring on or
24 after July 1, 1993, the employer shall pay the actual funeral expenses, not
25 exceeding the sum of six thousand dollars (\$6,000)."

26

27 SECTION 26. Arkansas Code §11-9-529 is hereby amended to read as
28 follows:

29 "11-9-529. Employer Reports.

30 (a) Within ten (10) days after the date of receipt of notice or of
31 knowledge of injury or death, the employer shall send to the commission a
32 report setting forth:

- 33 (1) The name, address, and business of the employer;
34 (2) The name, address, and occupation of the employee;
35 (3) The cause and nature of the injury or death;

1 (4) The year, month, day, and hour when, and the particular
2 locality where, the injury or death occurred; and

3 (5) Such other information as the commission may require.

4 (b) Additional reports with respect to the injury and of the condition
5 of the employee shall be sent by the employer to the commission at such time
6 and in such manner as the commission may prescribe.

7 (c) Any report provided for in subsection (a) or (b) of this section
8 shall not be evidence of any fact stated in the report in any proceeding with
9 respect to the injury or death on account of which the report is made.

10 (d) The mailing of any report in a stamped envelope, properly
11 addressed, within the time prescribed in subsections (a) or (b) of this
12 section, shall be in compliance with this section.

13 (e) Any employer who after notice refuses to send any report required
14 of him by this section shall be subject to a civil penalty in an amount up to
15 five hundred dollars (\$500) for each refusal. Whenever the employer has
16 failed or refused to comply as herein provided, the commission may serve upon
17 such employer a proposed order declaring the employer to be in violation of
18 this chapter and containing the amount, if any, of the civil penalty to be
19 assessed against the employer pursuant to this section.

20 (f) An employer may contest a proposed order of the commission issued
21 pursuant to subsection (e) of this section by filing with the commission,
22 within twenty (20) days of receipt of the proposed order, a written request
23 for a hearing. If a written request for hearing is not filed with the
24 commission within this time, the proposed order, proposed penalty or both
25 shall be a final order of the commission. Such a request for a hearing need
26 not be in any particular form, but shall specify the grounds upon which the
27 person contests the proposed order, the proposed assessment or both. A
28 proposed order by the commission pursuant to this section is prima facie
29 correct, and the burden is upon the employer to prove that the proposed order
30 is incorrect.

31 (g) Hearings conducted under this section shall proceed as provided in
32 §§11-9-704 - 11-9-711.

33 (h) If an employer fails to pay any civil penalty assessed
34 thereagainst after an order issued pursuant to this section has become final
35 by operation of law, the Commission may petition the Chancery Court of the

1 county wherein is located the employer's principal place of business for an
2 order enjoining the employer from engaging in further employment or conduct of
3 business or until such time as the employer makes all required reports and
4 pays all civil penalties."

5

6 SECTION 27. Arkansas Code Section 11-9-702 is amended to read as
7 follows:

8 "11-9-702. Filing of Claims.

9 (a) TIME FOR FILING.

10 (1) A claim for compensation for disability on account of an
11 injury, other than an occupational disease and occupational infection, shall
12 be barred unless filed with the Commission within two (2) years from the date
13 of the compensable injury. If, during the two-year period following the
14 filing of the claim, the claimant receives no weekly benefit compensation and
15 receives no medical treatment resulting from the alleged injury, the claim
16 shall be barred thereafter.

17 (2) For purposes of this statute the date of the compensable
18 injury shall be defined as the date an injury is caused by an accident as
19 set forth in Ark. Code Ann. §11-9-102(5).

20 (3) A claim for compensation for disability on account of
21 injury which is either an occupational disease or occupational infection shall
22 be barred unless filed with the Commission within two (2) years from the date
23 of the last injurious exposure to the hazards of the disease or infection.

24 (A) However, a claim for compensation for disability on
25 account of silicosis or asbestosis must be filed with the Commission within
26 one (1) year after the time of disablement, and the disablement must occur
27 within three (3) years from the date of the last injurious exposure to the
28 hazard of silicosis or asbestosis.

29 (B) Also, a claim for compensation for disability on account
30 of a disease condition caused by exposure to x-rays, radioactive substances,
31 or an ionizing radiation only must be filed with the Commission within two (2)
32 years from the date the condition is made known to an employee following
33 examination and diagnosis by a medical doctor.

34 (4) A claim for compensation on account of death shall be barred
35 unless filed with the Commission within two (2) years of the date of such

1 death.

2 (5) *If, within six (6) months after the filing of a claim for*
3 *compensation, no bona fide request for a hearing has been made with respect to*
4 *the claim, the claim may upon motion and after hearing be dismissed without*
5 *prejudice to the refileing of the claim within limitation periods specified in*
6 *subdivision (a) (1)-(4) of this section.*

7 (b) *TIME FOR FILING ADDITIONAL COMPENSATION. In cases where any*
8 *compensation including disability or medical, has been paid on account of*
9 *injury a claim for additional compensation shall be barred unless filed with*
10 *the Commission within one (1) year from the date of the last payment of*
11 *compensation, or two (2) years from the date of the injury, whichever is*
12 *greater. The time limitations of this subsection shall not apply to claims*
13 *for the replacement of medicine, crutches, ambulatory devices, artificial*
14 *limbs, eyeglasses, contact lenses, hearing aids, and other apparatus*
15 *permanently or indefinitely required as the result of a compensable injury,*
16 *where the employer or carrier previously furnished such medical supplies but*
17 *replacement of such items shall not constitute payment of compensation so as*
18 *to toll the running of the statute of limitations.*

19 (c) *A claim for additional compensation must specifically state that*
20 *it is a claim for additional compensation. Documents which do not*
21 *specifically request additional benefits shall not be considered a claim for*
22 *additional compensation.*

23 (d) *If, within six (6) months after the filing of a claim for*
24 *additional compensation, no bona fide request for a hearing has been made with*
25 *respect to the claim, the claim may upon motion and after hearing if necessary*
26 *be dismissed without prejudice to the refileing of the claim within the*
27 *limitation period specified in subdivision (b) of this section.*

28 (e) *FAILURE TO FILE. Failure to file a claim within the period*
29 *prescribed in subsections (a) or (b) of this section shall not be a bar to the*
30 *right unless objection to the failure is made at the first hearing on the*
31 *claim in which all parties in interest have been given a reasonable notice and*
32 *opportunity to be heard.*

33 (f) *PERSONS UNDER DISABILITY.*

34 (1) *Notwithstanding any statute of limitation provided for in*
35 *this chapter, when it is established that failure to file a claim by an*

1 injured employee or his dependents was induced by fraud, the claim may be
2 filed within one (1) year from the time of the discovery of the fraud.

3 (2) The provisions of subsections (a) or (b) of this section
4 shall not apply to a mental incompetent or minor so long as the person has no
5 guardian or similar legal representative. The limitations prescribed in
6 subsections (a) or (b) of this section shall apply to the mental incompetent
7 or minor from the date of the appointment of a guardian or similar legal
8 representative for that person, and where no guardian or similar
9 representative has been appointed, to a minor upon obtainment of majority.

10 (g) A latent injury or condition shall not delay or toll the
11 limitation periods specified in this section. However, this subsection shall
12 not apply to the limitation period for occupational diseases specified in
13 subsection (a) (3).

14 (h) The purpose of this statute is to provide for a timely hearing on
15 claims for benefits. The purpose and intent of this statute also includes the
16 annulment of any and all case law inconsistent herewith."

17

18 SECTION 28. Arkansas Code §11-9-703(4) is amended to read as follows:

19 "(4) To authorize the legal advisor to approve compromise settlements
20 entered into at or as a result of the preliminary conference, and those joint
21 petition settlements entered into pursuant to §11-9-805, provided however, the
22 same legal advisors shall not both advise the claimant and approve the joint
23 petition. The purpose and intent of this section is to affirm the duty of the
24 Commission to provide legal assistance, reducing litigation and workers'
25 compensation cost."

26

27 SECTION 29. Arkansas Code §11-9-704(c) (3) is amended to read as
28 follows:

29 "(3) Administrative law judges, the Commission, and any reviewing
30 courts shall construe the provisions of this chapter strictly."

31

32 SECTION 30. Arkansas Code Section 11-9-705 is hereby amended to read as
33 follows:

34 "11-9-705. Nature of proceedings generally.

35 (a) Conduct of Hearing or Inquiry.

1 (1) In making an investigation or inquiry or conducting a hearing,
2 the commission shall not be bound by technical or statutory rules of evidence
3 or by technical or formal rules of procedure, except as provided by this
4 chapter, but may make such investigations or inquiry, or conduct the hearing
5 in a manner as will best ascertain the rights of the parties.

6 (2) Declarations of a deceased employee concerning the injury in
7 respect of which the investigation or inquiry is being made, or the hearing
8 conducted, may be received in evidence and may, if corroborated by other
9 evidence, be sufficient to establish the injury.

10 (3) When deciding any issue, administrative law judges and the
11 commission shall determine, on the basis of the record as a whole, whether the
12 party having the burden of proof on the issue has established it by a
13 preponderance of evidence.

14 (b) Hearings to be public - Records.

15 (i) Hearings before the commission shall be open to the public
16 and shall be stenographically reported, and the commission is authorized to
17 contract for the reporting of the hearings. The commission shall, by rule or
18 regulation, provide for the preparation of a record of all hearings and other
19 proceedings before it.

20 (ii) However, the Commission shall not be required to
21 stenographically report or prepare a record of joint petition hearings.
22 Instead, the administrative law or legal adviser shall tape the hearing at no
23 cost to the parties.

24 (c) Introduction of Evidence.

25 (1) All oral evidence or documentary evidence shall be presented
26 to the designated representative of the commission at the initial hearing on a
27 controverted claim, which evidence shall be stenographically reported. Each
28 party shall present all evidence at the initial hearing. Further hearings for
29 the purpose of introducing additional evidence will be granted only at the
30 discretion of the hearing officer or commission. A request for a hearing for
31 the introduction of additional evidence must show the substance of the
32 evidence desired to be presented.

33 (2) (A) Any party proposing to introduce medical reports or testimony
34 of physicians at the hearing of a controverted claim shall, as a condition
35 precedent to the right to do so, furnish to the opposing party and to the

1 commission copies of the written reports of the physicians of their findings
2 and opinions at least seven (7) days prior to the date of the hearing.
3 However, if no written reports are available to a party, then the party shall,
4 in lieu of furnishing the report, notify in writing the opposing party and the
5 commission of the name and address of the physicians proposed to be used as
6 witnesses at least seven (7) days prior to the hearing and the substance of
7 their anticipated testimony.

8 (B) If the opposing party desires to cross-examine the
9 physician, he should notify the party who submits a medical report to him as
10 soon as practicable, in order that he may make every effort to have the
11 physician present for the hearing.

12 (3) A party failing to observe the requirements of subsection (c)
13 of this section may not be allowed to introduce medical reports or testimony
14 of physicians at a hearing, except in the discretion of the hearing officer or
15 the commission.

16 (4) The aforesaid time periods may be waived by the consent of
17 the parties."

18
19 SECTION 31. Arkansas Code Section 11-9-713 is hereby amended to read as
20 follows:

21 "11-9-713. Modification of awards.

22 (a) Except where a joint petition settlement has been approved, the
23 Commission may review any compensation order, award, or decision. This may be
24 done at any time within six (6) months of termination of the compensation
25 period fixed in the original compensation order or award, upon Commission's
26 own motion or upon the application of any party in interest, on the ground of
27 a change in physical condition or upon proof of erroneous wage rate. Upon the
28 review the Commission may make an order or award terminating, continuing,
29 decreasing, or increasing for the future the compensation previously awarded,
30 subject to the maximum limits provided for in this chapter.

31 (b) The review and subsequent order or award shall be made in
32 accordance with the procedure prescribed in 11-9-704.

33 (c) No review shall affect any compensation paid pursuant to a prior
34 order or award.

35 (d) The Commission may, at any time, correct any clerical error in any

1 compensation order or award.

2 (e) Aging and the effects of aging on a compensable injury are not to
3 be considered in determining whether there has been a change in physical
4 condition. Nor shall aging or the effect of aging on a compensable injury be
5 considered in determining permanent disability pursuant to this section or any
6 other section in this chapter. The purpose and intent of this section is to
7 annul any and all case law inconsistent herewith including *Tuberville vs.*
8 *International Paper Co.*, 302 Ark. 22, 786 SW2d 830 (1990)."

9

10 SECTION 32. Any benefits payable to an injured worker under this act
11 shall be reduced in an amount equal to, dollar for dollar, the amount of
12 benefits an injured worker has previously received for the same medical
13 services or period of disability, whether those benefits were paid under a
14 group health care service plan of whatever form or nature or a group
15 disability policy, group loss of income policy, a group accident, health or
16 accident and health policy, a self-insured employee health and/or welfare
17 benefit plan, or a group hospital or medical service contract. The claimant
18 shall be required to disclose in a manner to be determined by the Commission
19 the identity, address or phone number of any person or entity which has paid
20 benefits described in this section in connection with any claim under this
21 act. Prior to any final award or approval of a joint petition, the claimant
22 shall be required to furnish the respondent with releases of all subrogation
23 claims for the benefits described in this section. In the event the claimant
24 is unable to produce releases required by this section then the Commission
25 shall determine the amount of such potential subrogation claim(s) and shall
26 direct the carrier or self-insured employer to hold in reserve only said sums
27 for a period of five (5) years. If after the expiration of five (5) years, no
28 release or final court order is presented otherwise directing the payment of
29 said sums, then the carrier or self-insured employer shall tender said sums to
30 the Death and Permanent Disability Fund.

31

32 SECTION 33. Arkansas Code §11-9-805 is hereby amended to read as
33 follows:

34 "11-9-805. Joint petition for final settlement.

35 (a) Upon petition filed by the employer or carrier and the injured

1 employee, requesting that a final settlement be had between the parties, the
2 Commission shall hear the petition and take such testimony and make such
3 investigations as may be necessary to determine whether a final settlement
4 should be had.

5 (b) If the Commission decides it is for the best interests of the
6 claimant that a final award be made, it may order an award that shall be final
7 as to the rights of all parties to the petition. Thereafter the Commission
8 shall not have jurisdiction over any claim for the same injury or any results
9 arising from it.

10 (c) If an employee has returned to work or agreed to return to work
11 the Commission shall not approve a joint petition which has allotted monies
12 for vocational rehabilitation or any indemnity benefits in excess of that
13 payable as an anatomical impairment as established by objective and measurable
14 findings.

15 (d) If the Commission denies the petition, the denial shall be without
16 prejudice to either party.

17 (e) No appeal shall lie from an order or award denying a joint
18 petition."

19

20 SECTION 34. Subchapter 8 of Chapter 9 of Title 11 of the Arkansas Code
21 is amended by inserting at the end thereof the following new section:

22 "11-9-812. (A) Upon approval by the Arkansas insurance commissioner
23 and following the adoption of such rules and regulations as the commissioner
24 deems necessary and advisable, each insurer issuing a policy under this
25 chapter shall offer, as a part of the policy or as an optional endorsement to
26 the policy, deductibles optional to the policyholder for benefits payable
27 under this chapter. Deductible amounts offered shall be fully disclosed to
28 the prospective policyholder in writing in the amount of \$100, \$200, \$300,
29 \$400, \$500, or increments of \$500 up to a maximum of \$2,500 per compensable
30 claim, or in such other amounts as may be set by the commissioner. The
31 policyholder exercising the deductible option shall choose only one deductible
32 amount.

33 (B) If the policyholder exercises the option and chooses a deductible,
34 the insured employer shall be liable for the amount of the deductible for
35 benefits paid for each compensable claim of work injury suffered by an

1 employee. The insurer shall pay all or part of the deductible amount,
2 whichever is applicable to a compensable claim, to the person or medical
3 provider entitled to the benefits conferred by this chapter and then seek
4 reimbursement from the insured employer for the applicable deductible amount.

5 The payment or nonpayment of deductible amounts by the insured employer to
6 the insurer shall be treated under the policy insuring the liability for
7 workers' compensation in the same manner as payment or nonpayment of premiums.

8 (C) Optional deductibles shall be offered in each policy insuring
9 liability for workers' compensation that is issued, delivered, issued for
10 delivery, or renewed under this chapter on or after approval by the insurance
11 commissioner, unless an insured employer and insurer agree to renegotiate a
12 workers' compensation policy in effect on that date so as to include a
13 provision allowing for a deductible.

14 (D) If the Insurance Commissioner determines it to be feasible and
15 under such rules and regulations as he may adopt premium reduction for
16 deductibles may be determined before the application of any experience
17 modification, premium surcharge, or premium discounts and to the extent that
18 an employer's experience rating or safety record is based on benefits paid,
19 money paid by the insured employer under a deductible as provided in this code
20 section may not be included as benefits paid so as to harm the experience
21 rating of such employer.

22 (E) This section shall not apply to employers who are approved to self-
23 insure against liability for workers' compensation or group self-insurance
24 funds for workers' compensation."
25

26 SECTION 35. The Seventy-Ninth General Assembly realizes that the
27 Arkansas Workers_ Compensation statutes must be revised and amended from time
28 to time. Unfortunately many of the changes made by this act were necessary
29 because Administrative Law Judges, the Workers_ Compensation Commission, and
30 the Arkansas Courts have continually broadened the scope and eroded the
31 purpose of the Workers_ Compensation statutes of this state. The Seventy-
32 Ninth General Assembly intends to restate that the major and controlling
33 purpose of Workers_ Compensation is to pay timely temporary and permanent
34 disability benefits to all legitimately injured workers that suffer an injury
35 or disease arising out of and in the course of their employment, to pay

1 reasonable and necessary medical expenses resulting therefrom and then to
2 return the worker to the workforce. When, and if, the Workers_ Compensation
3 statutes of this state need to be changed the General Assembly acknowledges
4 its responsibility to do so. It is the specific intent of the Seventy-Ninth
5 General Assembly to repeal, annul, and hold for naught all prior opinions or
6 decisions of any Administrative Law Judge, the Workers_ Compensation
7 Commission, or courts of this state contrary to or in conflict with any
8 provision in this act. In the future if such things as the Statute of
9 Limitations; the standard of review by the Workers_ Compensation Commission or
10 courts; the extent to which any physical condition, injury or disease should
11 be excluded from or added to coverage by the law; or the scope of the Workers_
12 Compensation statutes need to be liberalized, broadened, or narrowed it shall
13 be addressed by the General Assembly and should not be done by Administrative
14 Law Judges, the Workers_ Compensation Commission or the courts.

15

16 SECTION 36. (a) Every claim, request for benefits, request for
17 additional benefits, controversion of benefits, request for a hearing,
18 pleading, motion, and other paper of a party represented by an attorney shall
19 be signed by at least one (1) attorney of record in his or her individual
20 name, whose address shall be stated. A party who is not represented by an
21 attorney shall sign his claim, request for benefits, request for additional
22 benefits, controversion of benefits, request for a hearing, pleading, motion,
23 or other paper and state his address. The signature of an attorney or party
24 constitutes a certificate by him that he has read the claim, request for
25 benefits, request for additional benefits, controversion of benefits, request
26 for a hearing, pleading, motion, or other paper; that to the best of his
27 knowledge, information, and belief formed after reasonable inquiry it is well
28 grounded in fact and is warranted by existing law or a good faith argument for
29 the extension, modification, or reversal of existing law, and it is not
30 interposed for any improper purpose, such as to harass or to cause unnecessary
31 delay or needless increase in the cost of litigation. If a claim, request for
32 benefits, request for additional benefits, controversion of benefits, request
33 for a hearing, pleading, motion, or other paper is not signed, it shall be
34 stricken unless it is signed promptly after the omission is called to the
35 attention of the pleader or movant. If a claim, request for benefits, request

1 for additional benefits, controversion of benefits, request for a hearing,
2 pleading, motion, or other paper is signed in violation of this rule, the
3 commission, including administrative law judges, upon motion or upon their own
4 initiative, shall impose upon the person who signed it, a represented party,
5 or both, an appropriate sanction, which may include an order to pay to the
6 other party or parties the amount of reasonable expenses incurred because of
7 the filing of a claim, request for benefits, request for additional benefits,
8 controversion of benefits, request for a hearing, pleading, motion, or other
9 paper, including a reasonable attorney fee.

10 (b) Appropriate sanctions, including the amount of reasonable expenses
11 and attorney fees may also be imposed against a party or their attorney which
12 without good cause shown, fails to appear for a hearing, deposition, or any
13 other matter scheduled by the commission or administrative law judge, or
14 frivolously joins another party.

15

16 SECTION 37. Arkansas Code 11-9-802 is amended to read as follows:

17 "11-9-802. Installments.

18 (a) The first installment of compensation shall become due on the
19 fifteenth (15th) day after the employer has notice of the injury or death, as
20 provided in §11-9-701, on which date all compensation then accrued shall be
21 paid. Thereafter compensation shall be paid every two (2) weeks except where
22 the commission directs that installment payments be made at other periods.

23 (b) If any installment of compensation payable without an award is not
24 paid within fifteen (15) days after it becomes due, as provided in subsection
25 (a) of this section, there shall be added to the unpaid installment an amount
26 equal to eighteen percent (18%) thereof, which shall be paid at the same time
27 as, but in addition to, the installment, unless notice of controversion is
28 filed or an extension is granted the employer under §11-9-803, or unless such
29 non-payment is excused by the commission after a showing by the employer that
30 owing to conditions over which he had no control, the installment could not be
31 paid within the period prescribed.

32 (c) If any installment, payable under the terms of an award, is not
33 paid within fifteen (15) days after it becomes due, there shall be added to
34 such unpaid installment an amount equal to twenty percent (20%) thereof, which
35 shall be paid at the same time as, but in addition to, the installment unless

1 review of the compensation order making the award is had as provided in §§11-
2 9-710 - 11-9-712.

3 (d) Medical bills are payable within thirty (30) days after receipt by
4 the respondent unless disputed as to compensability or amount.

5 (e) In the event the commission finds the failure to pay any benefit is
6 willful and intentional the penalty shall be up to thirty-six percent (36%)
7 payable to the claimant."

8

9 SECTION 38. 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 specifically
12 including Section 35.

13

14 SECTION 39. If any provision of this act or the application thereof to
15 any person or circumstance is held invalid, such invalidity shall not affect
16 other provisions or applications of the act which can be given effect without
17 the invalid provision or application, and to this end the provisions of this
18 act are declared to be severable.

19

20 SECTION 40. All laws and parts of laws in conflict with this act are
21 hereby repealed.

22

23 SECTION 41. Emergency. It is hereby found and determined by the
24 General Assembly that the Workers_ Compensation Law is in immediate need of
25 substantial revision; that this act accomplishes immediate revision; and that
26 this act shall go into effect as soon as is practical which is determined to
27 be July 1, 1993; and that unless this emergency clause is adopted, this act
28 will not go into effect until after July 1, 1993. Therefore, an emergency is
29 hereby declared to exist, and this act being immediately necessary for the
30 preservation of the public peace, health and safety shall be in full force and
31 effect from and after July 1, 1993. Furthermore, the provisions of this act
32 shall apply only to injuries which occur after July 1, 1993.

33

/s/Mike Wilson, et al

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APPROVED: 3/31/93

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