

1 State of Arkansas
2 90th General Assembly
3 Regular Session, 2015
4

A Bill

HOUSE BILL 1768

5 By: Representatives Shepherd, Gillam
6 By: Senators J. Cooper, J. Dismang, D. Sanders
7

For An Act To Be Entitled

9 AN ACT TO AMEND THE WORKERS' COMPENSATION LAW ENACTED
10 BY INITIATED ACT 4 OF 1948; TO RESTORE THE
11 SUBROGATION RIGHTS FOR AN EMPLOYER OR AN EMPLOYER'S
12 INSURANCE CARRIER; TO MODIFY THE DEATH AND PERMANENT
13 TOTAL DISABILITY TRUST FUND; TO DECLARE AN EMERGENCY;
14 AND FOR OTHER PURPOSES.
15

Subtitle

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18 TO AMEND THE WORKERS' COMPENSATION LAW
19 ENACTED BY INITIATED ACT 4 OF 1948 AND TO
20 DECLARE AN EMERGENCY.
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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25 SECTION 1. DO NOT CODIFY. Findings and intent.

26 (a) The General Assembly finds that the workers' compensation laws in
27 this state need to be revised and amended from time to time.

28 (b) It is the intent of the General Assembly to:

29 (1) Restate that the major and controlling purpose of workers'
30 compensation is to:

31 (A) Pay timely temporary and permanent total and partial
32 disability benefits to all legitimately injured workers who suffer an injury
33 or disease arising from and in the course of their employment;

34 (B) Pay reasonable and necessary medical expenses
35 resulting from those injuries; and

36 (C) Return the worker to the work force;



1 (2) Repeal, annul, and hold for naught, in any future workers'
2 compensation action, the holdings of prior opinions or decisions of any
3 administrative law judge, the Workers' Compensation Commission, or courts of
4 this state if contrary to or in conflict with any provision in this act;

5 (3) In the future, if such things as the statute of limitations,
6 the standard of review by the Workers' Compensation Commission or courts, the
7 extent to which any physical condition, injury, or disease should be excluded
8 from or added to coverage by the law, or the scope of the workers'
9 compensation law needs to be liberalized, broadened, or narrowed, address the
10 issues; and

11 (4) Address the unfunded liability of the Death and Permanent
12 and Total Disability Trust Fund by barring new claims against the fund as of
13 July 1, 2015.

14 (c) The purpose of Section 2 of this act is to preserve the statutory
15 method of distribution and to specifically annul any case law inconsistent
16 with, including without limitation:

17 (1) St. Paul Fire & Marine Ins. Co. v. Wood, 242 Ark. 879, 416
18 S.W.2d 322 (1967);

19 (2) Travelers Ins. Co. v. McClusky, 252 Ark. 1045, 483 S.W.2d
20 179 (1972);

21 (3) Liberty Mutual Insurance Co. v. Billingsley, 256 Ark. 947,
22 511 S.W.2d 476 (1974);

23 (4) International Paper Co. v. Wilson, 34 Ark.App. 87, 805
24 S.W.2d 668 (1991);

25 (5) General Accident Ins. Co. v. Jaynes, 343 Ark. 143, 33 S.W.3d
26 161 (2001); and

27 (6) Phillip Morris USA, Inc. v. James, 79 Ark. App. 72, 83
28 S.W.3d 441 (2002).

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30 SECTION 2. Arkansas Code § 11-9-410(a), concerning third-party
31 liability, is amended to add an additional subdivision to read as follows:

32 (3) The specific method of distribution of recovery as stated
33 under this section shall prevail over common law and equitable provisions,
34 and the application of the equitable made-whole doctrine shall not apply.

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36 SECTION 3. Arkansas Code § 11-9-410(c)(1), concerning settlement of

1 claims, is amended to read as follows:

2 (1) Settlement of claims under subsections (a) and (b) of this
 3 section ~~must~~ shall have the approval of ~~the court or the Workers'~~
 4 Compensation Commission, ~~except that the distribution of that portion of the~~
 5 ~~settlement that represents the compensation payable under this chapter must~~
 6 ~~have the approval of the commission~~ prior to submission to the court.

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 8 SECTION 4. Arkansas Code § 11-9-410(c)(3), concerning subrogation
 9 rights, is amended to read as follows:

10 (3)(A) ~~No~~ A party shall not settle a claim under subsections (a)
 11 and (b) of this section without first giving three (3) days' written notice
 12 to all parties with an interest in the claim of the intent to settle.

13 (B) The employer's or the employer's insurance carrier's
 14 rights to subrogation under subsection (a) and (b) of this section are
 15 absolute, and the employee and third party may not settle around the employer
 16 or the employer's insurance carrier or in any way limit an employer's or
 17 employer's insurance carrier's rights to recover its lien from the proceeds
 18 of a settlement involving the employee or third party by purporting to
 19 preserve the employer's or the employer's insurance carrier's rights to
 20 pursue subrogation against the third party on its own, without the express
 21 written consent of the employer or the employer's insurance carrier.

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 23 SECTION 5. Arkansas Code § 11-9-502(b)(1), concerning weekly benefit
 24 amounts by an employer or the employer's insurance carrier, is amended to add
 25 an additional subdivision to read as follows:

26 (C) For an injury occurring on or after July 1, 2015:
 27 (i) The employer or the employer's insurance carrier
 28 shall pay all weekly benefits for death and permanent total disability; and
 29 (ii) The Death and Permanent Total Disability Trust
 30 Fund shall not pay benefits of any kind for the injury.

31
 32 SECTION 6. Arkansas Code § 11-9-502(b)(1)(B), concerning weekly
 33 benefit amounts by an employer or its insurance carrier, is amended to read
 34 as follows:

35 (B) For injuries occurring on or after January 1, 2008,
 36 and before July 1, 2015, the employer or its insurance carrier shall pay

1 weekly benefits for death or permanent total disability not to exceed three
 2 hundred twenty-five (325) times the maximum total disability rate established
 3 for the date of the injury under this chapter.

4
 5 SECTION 7. EMERGENCY CLAUSE. It is found and determined by the
 6 General Assembly of the State of Arkansas that the Death and Permanent Total
 7 Disability Trust Fund will be in financial distress if additional claims are
 8 made against the fund; that an urgent need exists to address the fund's
 9 inability to fully fund further claims to ensure the continued viability of
 10 the fund; and that this act is necessary because it protects the fund balance
 11 from future claims. Therefore, an emergency is declared to exist, and this
 12 act being necessary for the preservation of the public peace, health, and
 13 safety shall become effective on July 1, 2015.