

1 State of Arkansas
2 93rd General Assembly
3 Regular Session, 2021
4

A Bill

SENATE BILL 16

5 By: Senator D. Sullivan
6 By: Representative Gonzales
7

For An Act To Be Entitled

9 AN ACT TO AMEND CERTAIN PROVISIONS OF INITIATED ACT 4
10 OF 1948; TO SUSPEND CERTAIN PROVISIONS OF THE
11 WORKERS' COMPENSATION LAW WITH REGARD TO CERTAIN
12 WORKERS DUE TO THE CORONAVIRUS 2019 (COVID-19)
13 OUTBREAK; TO DECLARE AN EMERGENCY; AND FOR OTHER
14 PURPOSES.
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Subtitle

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18 TO AMEND CERTAIN PROVISIONS OF INITIATED
19 ACT 4 OF 1948; AND TO DECLARE AN
20 EMERGENCY.
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
24

25 SECTION 1. TEMPORARY LANGUAGE. DO NOT CODIFY. Legislative intent.
26 It is the intent of the General Assembly to:

27 (1) Clarify and provide sufficient recourse under the Workers'
28 Compensation Law, § 11-9-101 et seq., for employees to receive workers'
29 compensation benefits during the coronavirus 2019 (COVID-19) outbreak and the
30 resulting public health emergency;

31 (2) Provide assurance that employees, first responders, Arkansas
32 National Guard Soldiers and Airmen on state active duty, and front-line
33 healthcare workers who test positive for coronavirus 2019 (COVID-19) may be
34 eligible for workers' compensation if they can demonstrate a causal
35 connection, as required by law, between their diagnosis for coronavirus 2019
36 (COVID-19) and exposure to coronavirus 2019 (COVID-19), as a result of their



1 employment or occupation; and

2 (3) Clarify that claims for workers' compensation due to
 3 exposure to coronavirus 2019 (COVID-19) have to be incurred due to one's
 4 employment and not due to exposure outside the line of duty.

5
 6 SECTION 2. Arkansas Code § 11-9-105(a), concerning exclusivity of
 7 rights and remedies under the Workers' Compensation Law and resulting from
 8 Initiated Act 4 of 1948, is amended to read as follows:

9 (a)(1) The rights and remedies granted to an employee subject to the
 10 provisions of this chapter, on account of injury or death, shall be exclusive
 11 of all other rights and remedies of the employee, his or her legal
 12 representative, dependents, next of kin, or anyone otherwise entitled to
 13 recover damages from the employer, or any principal, officer, director,
 14 stockholder, or partner acting in his or her capacity as an employer, or
 15 prime contractor of the employer, on account of the injury or death, and the
 16 negligent acts of a coemployee shall not be imputed to the employer.

17 (2) ~~No~~ A role, capacity, or persona of any employer, principal,
 18 officer, director, or stockholder other than that existing in the role of
 19 employer of the employee shall not be relevant for consideration for purposes
 20 of this chapter, and the remedies and rights provided by this chapter shall
 21 in fact be exclusive regardless of the multiple roles, capacities, or
 22 personas the employer may be deemed to have.

23 (3) Requiring an employee to perform work when the employer has
 24 knowledge that, within the normal course and scope of the employee's job
 25 performance, exposure to severe acute respiratory syndrome coronavirus 2
 26 (SARS-CoV-2) or to coronavirus 2019 (COVID-19) or to any other disease,
 27 health condition, or threat caused by severe acute respiratory syndrome
 28 coronavirus 2 (SARS-CoV-2) or by any virus mutating from severe acute
 29 respiratory syndrome coronavirus 2 (SARS-CoV-2) is possible, likely, or
 30 certain is not intentional conduct that would remove the employer from the
 31 protections of the Workers' Compensation Law, § 11-9-101 et seq.

32
 33 SECTION 3. Arkansas Code § 11-9-114 is amended to read as follows:
 34 11-9-114. Heart or lung injury or illness.

35 (a) A cardiovascular, coronary, pulmonary, respiratory, or
 36 cerebrovascular accident or myocardial infarction causing injury, illness, or

1 death is a compensable injury only if, in relation to other factors
 2 contributing to the physical harm, an accident is the major cause of the
 3 physical harm.

4 (b)(1)(A) An injury or disease included in subsection (a) of this
 5 section shall not be deemed to be a compensable injury unless it is shown
 6 that the exertion of the work necessary to precipitate the disability or
 7 death of an employee was extraordinary and unusual in comparison to the
 8 employee's usual work in the course of the employee's regular employment or,
 9 ~~alternately,~~ that some unusual and unpredicted incident occurred which is
 10 found to have been the major cause of the physical harm.

11 (B) As used in this subdivision (b)(1), "unusual and
 12 unpredicted incident" includes without limitation the exposure to coronavirus
 13 2019 (COVID-19) or a disease, health condition, or threat caused by severe
 14 acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or by any virus
 15 mutating from severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) as
 16 a pulmonary and respiratory accident.

17 (2) Stress, physical or mental, shall not be considered in
 18 determining whether the employee or claimant has met his or her burden of
 19 proof.

20
 21 SECTION 4. Arkansas Code § 11-9-601(e), concerning the definition of
 22 "occupational disease", is amended to read as follows:

23 (e)(1)(A) "Occupational disease", as used in this chapter, unless the
 24 context otherwise requires, means ~~any~~ a disease that results in disability or
 25 death and arises out of and in the course of the occupation or employment of
 26 the employee or naturally follows or unavoidably results from an injury as
 27 that term is defined in this chapter.

28 (B) However, a causal connection between the occupation or
 29 employment and the occupational disease ~~must~~ shall be established by a
 30 preponderance of the evidence.

31 (2)(A) ~~No compensation~~ Compensation shall not be payable for any
 32 contagious or infectious disease unless contracted in the course of
 33 employment in or immediate connection with a hospital or sanitorium in which
 34 persons suffering from that disease are cared for or treated.

35 (B) Subdivision (e)(2)(A) of this section does not apply
 36 to a first responder or a front-line healthcare worker if the contagious or

1 infectious disease is coronavirus 2019 (COVID-19) or exposure to any other
 2 disease, health condition, or threat caused by severe acute respiratory
 3 syndrome coronavirus 2 (SARS-CoV-2) or by any virus mutating from severe
 4 acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

5 (3)(A) ~~No compensation~~ Except for coronavirus 2019 (COVID-19) or
 6 exposure to any other disease, health condition, or threat caused by severe
 7 acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or by any virus
 8 mutating from severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2),
 9 compensation shall not be payable for any ordinary disease of life to which
 10 the general public is exposed.

11 (B) Coronavirus 2019 (COVID-19) or a disease, health
 12 condition, or threat caused by severe acute respiratory syndrome coronavirus
 13 2 (SARS-CoV-2) or by any virus mutating from severe acute respiratory
 14 syndrome coronavirus 2 (SARS-CoV-2) shall be established as an occupational
 15 disease, including without limitation by meeting all requirements for an
 16 occupational disease provided by law, for the exception provided under
 17 subdivision (e)(3)(A) of this section to apply.

18 (4) As used in this subsection:

19 (A) "First responder" means an emergency response provider
 20 who in the early stages of an incident is responsible for the protection and
 21 preservation of life, property, evidence, and the environment and includes
 22 without limitation:

23 (i) A firefighter;

24 (ii) A member of law enforcement;

25 (iii) An emergency responder;

26 (iv) An emergency medical professional;

27 (v) An Arkansas National Guard soldier or airmen on
 28 state active duty; or

29 (vi) Any other employee determined to be eligible by
 30 the Workers' Compensation Commission; and

31 (B) "Front-line healthcare worker" means a healthcare
 32 professional who:

33 (i) Provides treatment, diagnosis, care, or
 34 mitigation of coronavirus 2019 (COVID-19);

35 (ii) Provides assessment or care of an individual
 36 with a confirmed or suspected case of coronavirus 2019 (COVID-19); or

1 (iii) Otherwise provides services determined by the
2 commission to mitigate coronavirus 2019 (COVID-19).

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4 SECTION 5. EMERGENCY CLAUSE. It is found and determined by the
5 General Assembly of the State of Arkansas that the threat to employees,
6 employers, first responders, front-line healthcare worker, and businesses to
7 coronavirus 2019 (COVID-19) or a disease, health condition, or threat caused
8 by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or by any
9 virus mutating from severe acute respiratory syndrome coronavirus 2 (SARS-
10 CoV-2) and its lingering financial impact is creating uncertainty for
11 performing daily activities, including conducting business in Arkansas, and
12 causing businesses to remain closed and unemployment for Arkansans to
13 increase; that protecting employees, employers, first responders, front-line
14 healthcare workers, and businesses in Arkansas can encourage financial
15 recovery and is vital to ensuring the safety and protection of the citizens
16 of this state; and that this act is immediately necessary to protect
17 employees, employers, first responders, front-line workers, and businesses
18 from the financial impact due to fear of and exposure to coronavirus 2019
19 (COVID-19) or to severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2)
20 or any of its mutations to continue safe business operations and encourage
21 economic recovery in Arkansas. Therefore, an emergency is declared to exist,
22 and this act being immediately necessary for the preservation of the public
23 peace, health, and safety shall become effective on:

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

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

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