

State of Arkansas
90th General Assembly
Regular Session, 2015

A Bill

HOUSE BILL 1768

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

For An Act To Be Entitled

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

Subtitle

TO AMEND THE WORKERS' COMPENSATION LAW ENACTED BY INITIATED ACT 4 OF 1948 AND TO DECLARE AN EMERGENCY.

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

SECTION 1. DO NOT CODIFY. Findings and intent.

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

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

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

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

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

(C) Return the worker to the work force;



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

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

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

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

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

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

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

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

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

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

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

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

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

claims, is amended to read as follows:

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

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

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

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

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

(C) For an injury occurring on or after July 1, 2015:

(i) The employer or the employer's insurance carrier shall pay all weekly benefits for death and permanent total disability; and

(ii) The Death and Permanent Total Disability Trust Fund shall not pay benefits of any kind for the injury.

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

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

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

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