

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
92nd General Assembly
Regular Session, 2019

As Engrossed: H3/14/19 H3/20/19
A Bill

HOUSE BILL 1661

By: Representative Gonzales

By: Senator T. Garner

For An Act To Be Entitled

AN ACT CONCERNING THE ARKANSAS STATE CLAIMS
COMMISSION; CONCERNING CLAIMS MADE OR ACTIONS AGAINST
THE STATE; CONCERNING CLAIM AND ACTION PROCEDURES;
CONCERNING JURISDICTION OF THE ARKANSAS STATE CLAIMS
COMMISSION; AND FOR OTHER PURPOSES.

Subtitle

*CONCERNING THE ARKANSAS STATE CLAIMS
COMMISSION; CONCERNING CLAIMS MADE OR
ACTIONS AGAINST THE STATE; CONCERNING
CLAIM AND ACTION PROCEDURES; AND
CONCERNING JURISDICTION OF THE ARKANSAS
STATE CLAIMS COMMISSION.*

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

SECTION 1. Arkansas Code Title 19, Chapter 10, Subchapter 1, is amended to read as follows:

Subchapter 1 – General Provisions

19-10-101. Investigatory powers.

~~(a)(1) The Director of the Department of Finance and Administration, as soon as the director learns of facts from which he or she concludes that a claim, other than for personal injury or death of a state employee, may be filed under this chapter against the state or any of its agencies,~~



~~departments, or institutions, whether or not the claim has already been filed, is authorized and directed to investigate and take evidence concerning the claim~~ As soon as the Director of the Department of Finance and Administration learns of facts from which the director concludes that a claim may be filed under this chapter against the state or a state agency, the director shall investigate and take evidence concerning the claim.

(2) The director's duty under subdivision (a)(1) of this section applies whether or not the claim has already been filed at the time the director learns the relevant facts upon which the director bases his or her conclusion.

(3) Subdivision (a)(1) of this section does not apply to a claim for personal injury or death of a state employee.

~~The director is, for this purpose, authorized to~~ To carry out his or her duties under this section, the director may exercise all necessary investigatory powers conferred upon him or her by this chapter.

(c) All information acquired by the director under this section shall be made available to the Arkansas State Claims Commission ~~prior to~~ before the hearing and determination thereof of the claim.

19-10-102. Legal representative for state agencies.

~~(a)(1) The attorneys of any~~ An attorney for a state agency, department, or institution against which a claim is filed shall represent ~~their respective agencies~~ his or her respective state agency before the Arkansas State Claims Commission.

(2) The Attorney General shall represent all ~~agencies, departments, and institutions which~~ state agencies that have no special legal representatives before the Arkansas State Claims Commission.

(b) Legal representation for a public employer before the Workers' Compensation Commission shall be in the manner prescribed in § 21-5-606.

19-10-103. State employee not to represent claimant.

~~No full-time employee of the State of Arkansas or of its agencies, nor a member of any agency, shall appear before either the Arkansas State Claims Commission or the Workers' Compensation Commission as attorney or representative for any claimant in the presentation or prosecution of any claim filed under this chapter~~ The following shall not appear before the

Arkansas State Claims Commission or the Workers' Compensation Commission as an attorney or representative for a claimant in the presentation or prosecution of a claim filed under this chapter:

- (1) A full-time employee of:
 - (A) The State of Arkansas; or
 - (B) A state agency; or
- (2) A member of a state agency.

19-10-104. Claims for late or lost warrants.

~~The Arkansas State Claims Commission, before~~ Before approving a claim for reissuance of a state warrant ~~for purchase of commodities delivered or services performed~~ that has been lost or presented for payment after expiration of the legal date for redemption, the Arkansas State Claims Commission shall request proof from the Auditor of State that:

- (1) ~~the~~ The original warrant was legally ~~cancelled~~ canceled because of late redemption presentation; ~~or, in~~
- (2) In the case of a lost warrant, an official warrant cancellation procedure has been exercised.

19-10-105. Definitions.

As used in this chapter:

- (1) *"General Assembly" means the appropriate subcommittee of the Legislative Council or the Joint Budget Committee that is assigned to hear appealed claims or claims requiring approval before being considered by the Legislative Council, the Joint Budget Committee, or the full General Assembly;*
- (2) *"Insurer" means a person engaged as indemnitor, surety, or contractor in the business of entering into contracts of insurance;*
- (3) *"State agency" means a department, office, board, commission, or institution of this state, including a state-supported institution of higher education; and*
- (4) *"Subrogation claim" means a claim filed with the Arkansas State Claims Commission by an insurer or by its insured, or both, to recover money paid or owed by an insurer to an individual under a contract of insurance.*

SECTION 2. Arkansas Code Title 19, Chapter 10, Subchapter 2, is

amended to read as follows:

Subchapter 2 – Arkansas State Claims Commission

19-10-201. Creation of commission – Members – Salary and expense reimbursement.

(a)(1)(A) There is created a commission to be known as the “Arkansas State Claims Commission”.

(B) ~~It~~ The commission shall consist of five (5) members to be known as “commissioners”.

(C) ~~Two (2) members shall be attorneys and one (1) member~~ All commissioners shall be a public-spirited ~~person~~ persons of recognized standing, and at least two (2) commissioners shall be attorneys licensed to practice law in the state of Arkansas.

(2)(A)(i) The commissioners shall be appointed by the Governor and confirmed by the Senate.

(ii) ~~They~~ The commissioners shall serve for terms of five (5) years and thereafter until a successor has been appointed and qualified.

(iii) A vacancy in the office of commissioner shall be filled by the Governor, and that appointee shall hold office during the unexpired portion of the term in which the vacancy occurred.

(B) ~~Members of the commission~~ Commissioners may be appointed to and may serve successive terms.

(b) Before entering upon the duties of his or her office, each commissioner shall take the constitutional oath of office.

(c)(1) A commissioner shall not hear or participate in the consideration of ~~any~~ a claim in which he or she is interested personally, either directly or indirectly.

(2) If for ~~reasons of conflicts~~ reason of conflict of interest a commissioner disqualifies himself or herself or is absent for any reason from hearing a particular claim, and if there are no other commissioners available to hear the claim or action, the interested parties may request that a ~~third~~ special commissioner be appointed by the Governor to hear a the specific claim or action.

(d) The commission shall elect from its membership a chair or two (2)

cochairs.

(e)(1)(A) Each commissioner shall receive ~~such a~~ salary as may be prescribed by law and appropriated by the General Assembly.

(B) The salary shall be paid in the manner as are salaries of other state officials and employees.

(2) In addition to salary, each ~~member~~ commissioner may receive expense reimbursement in accordance with § 25-16-901 et seq.

(f) The commission is considered an adjudicatory body when the commission applies or interprets:

(1) A substantive procedural rule; or

(2) Case law from an appellate court with jurisdiction to a pending claim or action.

19-10-202. Director – Personnel.

(a) The ~~Executive Secretary of the Arkansas State Claims Commission or Clerk~~ Director of the Arkansas State Claims Commission shall be designated by the Arkansas State Claims Commission and shall serve as both the ~~Director of the Arkansas State Claims Commission~~ Executive Secretary for and the Clerk of the Arkansas State Claims Commission.

(b) The commission may appoint ~~such~~ other personnel as may be necessary to effectuate the operations of the commission and as may be authorized by biennial appropriation of the General Assembly.

19-10-203. Duties of director.

(a)(1) The duties of the Director of the Arkansas State Claims Commission shall ~~maintain~~ include maintaining a system of filing and adjudicating of claims or actions against the state.

(2) The director shall keep a docket of all claims or actions filed and shall present them to the Arkansas State Claims Commission in the chronological order of filing.

~~(b)(3)~~ (3) The director ~~shall be~~ is responsible for maintenance and custody of the docket, files, and records of the commission, including the transcripts of testimony and exhibits, with all papers and requests filed in proceedings, the minutes of all actions taken, and all of the commission's findings, determinations, opinions, reports, orders, and rules, ~~and~~ regulations.

~~(e)(4)~~ The director shall prepare the docket of claims or actions to be considered by the commission and shall notify all parties of record of the time, date, and place of hearing in advance when a claim or action will be docketed for hearing before the commission.

(5) The director shall be responsible for hiring personnel in the administration of the commission.

~~(d)(b)~~ The ~~director shall be authorized by the commission~~ shall authorize the director to sign or authenticate all orders and other actions of the commission.

19-10-204. Jurisdiction.

~~(a) Except as otherwise provided by law, the Arkansas State Claims Commission shall have exclusive jurisdiction over all claims against the State of Arkansas and its several agencies, departments, and institutions, but shall have no jurisdiction of claims against municipalities, counties, school districts, or any other political subdivisions of the state.~~

~~(b)(1)(A)(i) The commission shall have no jurisdiction of, or authority with respect to, claims arising under:~~

~~(a) The Workers' Compensation Law, § 11-9-101 et seq.;~~

~~(b) The Department of Workforce Services Law, § 11-10-101 et seq.;~~

~~(c) The Arkansas Teacher Retirement System Act, Acts 1973, No. 427;~~

~~(d) The Arkansas Public Employees' Retirement System Act, Acts 1957, No. 177;~~

~~(e) The State Police Retirement System Act, § 24-6-201 et seq.; or~~

~~(f) Laws providing for old age assistance grants, child welfare grants, blind pensions, or any laws of a similar nature.~~

~~(ii) Additionally, the commission shall have no jurisdiction over claims against the state for repayment of child support, except in cases where the underlying support order is set aside as void ab initio by the court and the child support paid was retained by the state as reimbursement for public assistance paid on behalf of a child.~~

~~(iii) The commission shall have no jurisdiction over:~~

~~(a) A claim by a member of the uniformed armed services against the State Military Department, the State militia, or any subdivision thereof, if the claim arises out of the performance of the claimant's military duty;~~

~~(b) Claims against the Department of Community Correction for acts committed by a person while that person is subject to conditions of parole or probation under Arkansas law;~~

~~(c) Claims against the Department of Correction for acts committed by inmates while on authorized release from the Department of Correction; or~~

~~(d) Claims against the Division of Youth Services of the Department of Human Services for acts committed by juveniles released by the division, whether or not the juvenile is subject to conditions of aftercare or probation.~~

~~(B) Claims solely addressing the receipting, processing, and reissuance of child support payments through the Arkansas Child Support Clearinghouse shall remain within the jurisdiction of the commission.~~

~~(2)(A) The commission shall have jurisdiction only over those claims which are barred by the doctrine of sovereign immunity from being litigated in a court of general jurisdiction.~~

~~(B) The commission shall have no jurisdiction over claims for state tax refunds under § 26-18-507, claims challenging tax assessments under § 26-18-406, and claims challenging tax laws under Arkansas Constitution, Article 16, § 13.~~

~~(3)(A) The commission shall make no award for any claim which, as a matter of law, would be dismissed from a court of law for reasons other than sovereign immunity.~~

~~(B) Specifically, if the facts of a given claim would cause the claim to be dismissed as a matter of law from a court of general jurisdiction, then the commission shall make no award on the claim.~~

~~(c) The commission shall have jurisdiction over actions to contest eligibility, qualification, or election to serve as a member of the House of Representatives for the purpose of making a nonbinding recommendation thereon to that chamber of the General Assembly.~~

~~(d) The commission shall have jurisdiction over claims to recover reasonable attorney's fees and other litigation expenses reasonably incurred by plaintiffs who substantially prevailed in actions under § 25-19-107 against the State of Arkansas or a department, agency, or institution of the state under the standard described in § 25-19-107(d)(1).~~

(a) The Arkansas State Claims Commission has jurisdiction over:

(1) A claim or action that is barred by the doctrine of sovereign immunity under Arkansas Constitution, Article 5, § 20, from being litigated in a court of general jurisdiction, except as otherwise provided by law;

(2) A claim or action that solely addresses the receipting, processing, and reissuance of child support payments through the Arkansas Child Support Clearinghouse;

(3) A claim or action to contest eligibility, qualification, or election to serve as a member of the House of Representatives for the purpose of making a nonbinding recommendation on the claim or action to that chamber of the General Assembly; and

(4) A claim or action to recover reasonable attorney's fees and other litigation expenses reasonably incurred by a plaintiff who substantially prevails in an action under § 25-19-107 against the State of Arkansas or a state agency under the standard described in § 25-19-107(d)(1).

(b) The commission has no jurisdiction over a claim or action:

(1) Against a municipality, county, school district, or any other political subdivision of the state;

(2) Arising under:

(A) The Workers' Compensation Law, § 11-9-101 et seq.;

(B) The Department of Workforce Services Law, § 11-10-101 et seq.;

(C) The Arkansas Teacher Retirement System Act, Acts 1973, No. 427;

(D) The Arkansas Public Employees' Retirement System Act, Acts 1957, No. 177;

(E) The State Police Retirement System Act, § 24-6-201 et seq.; or

(F) Laws providing for old age assistance grants, child welfare grants, blind pensions, or any laws of a similar nature;

(3) Against the state for repayment of child support, except in cases in which the underlying support order is set aside as void ab initio by the court and the child support paid was retained by the state as reimbursement for public assistance paid on behalf of a child;

(4) Brought by a member of the uniformed armed services against the State Military Department, the State Militia, or any subdivision of the State Militia, if the claim or action arises out of the performance of the claimant's military duty;

(5) Brought against the Department of Community Correction for acts committed by a person while that person is subject to conditions of parole or probation under Arkansas law;

(6) Brought against the Department of Correction for acts committed by inmates while on authorized release from the Department of Correction;

(7) Brought against the Division of Youth Services of the Department of Human Services for acts committed by juveniles released by the division, whether or not the juvenile is subject to conditions of aftercare or probation; or

(8) For state tax refunds under § 26-18-507, a claim or action challenging tax assessments under § 26-18-406, or a claim or action challenging tax laws under Arkansas Constitution, Article 16, § 13.

(c) The commission shall not make an award for a claim or action that, as a matter of law, would be dismissed from a court of law for reasons other than sovereign immunity.

19-10-205. ~~Rules and regulations~~ Rulemaking authority.

The Arkansas State Claims Commission ~~shall have the power to~~ may make and alter or amend all rules ~~and regulations~~ governing the procedure before ~~it which the commission that~~ it may be ~~deemed~~ necessary and expedient for the orderly discharge of ~~its~~ the commission's duties and ~~which shall not be that~~ are not inconsistent with ~~any of the provisions of~~ this subchapter or other laws.

19-10-206. Meetings.

(a)(1) The Arkansas State Claims Commission shall meet at ~~such~~ the time and place ~~as may be~~ designated by the Chair of the Arkansas State Claims Commission, the cochairs of the Arkansas State Claims Commission, or the

Director of the Arkansas State Claims Commission.

(2) General meetings of the commission for the purpose of hearing testimony and taking evidence ~~will~~ shall be held each month unless scheduled differently by the ~~chair, the cochairs,~~ or the director.

(b) The commission may, ~~at its discretion,~~ hold a special ~~meetings~~ meeting of the commission upon request by the interested parties.

(c) The commission shall ~~traditionally~~ meet in Little Rock ~~at the State Capitol,~~ but may conduct hearings elsewhere in the state if the commission ~~deems~~ determines that a hearing is ~~relative~~ relevant to business before the commission.

(d)(1) A majority of the commissioners shall constitute a quorum, and the concurrence of two (2) members of the commission shall be necessary for the allowance or disallowance of any claims.

(2) A vacancy ~~shall~~ does not impair the right of the remaining two (2) ~~members~~ commissioners assigned to a particular hearing to exercise all powers of the full commission.

19-10-207. Power to examine.

(a) The Director of the Arkansas State Claims Commission or ~~any member~~ a commissioner of the Arkansas State Claims Commission ~~shall have~~ has the authority to administer oaths, to subpoena witnesses, to examine any books, documents, or records that may be relevant to any proceeding before the commission, and to require the production of any such materials.

(b) In ~~actions~~ an action to contest the election of a member of the House of Representatives, the commission's general authority to subpoena witnesses and documents shall specifically include the authority to subpoena election officers and to subpoena any ~~and all~~ ballots cast or other election records in the election at issue.

(c) If ~~any~~ a claimant or witness to whom an oath has been administered as provided ~~in~~ under this section ~~shall swear~~ swears falsely to ~~any~~ a fact material to the investigation of a claim, ~~such~~ the false swearing shall constitute perjury, and the ~~guilty party~~ person swearing falsely shall be subject to prosecution ~~therefor~~.

(d)(1)(A) If ~~any~~ a person or entity ~~shall fail or refuse~~ fails or refuses to obey ~~any~~ a commission subpoena or order or ~~shall refuse~~ refuses to testify or produce any books, papers, or other documents, the commission may

present its petition setting forth the facts to any court of record.

(B) ~~Thereupon, in a proper case,~~ After being presented with a petition under this subsection, the court of record shall issue its subpoena to the person or entity, requiring his or her or its attendance before the court of record to testify or produce ~~such the~~ books, papers, ~~and~~ or documents as may be deemed necessary and pertinent.

(C) ~~Any~~ A person or entity failing or refusing to obey the subpoena or order of the court of record may be proceeded against in the same manner as for refusal to obey any other subpoena, as provided by the Arkansas Rules of Civil Procedure.

(2) The commission ~~shall be entitled to the services of~~ may use the Attorney General and the services of the prosecuting attorneys for the county and district in which the enforcement of a subpoena under this subsection is required.

19-10-208. Complaints.

(a)(1) ~~All proceedings to enforce claims~~ A proceeding under this subchapter shall be commenced by a verified complaint, of which the original and three (3) copies shall be filed with the Director of the Arkansas State Claims Commission.

(2) The party filing the claim ~~should~~ or action shall be designated as the claimant, and the State of Arkansas, state agency, or applicable agent of the state shall be designated as the respondent.

(b) ~~The~~ Unless otherwise provided for under this section, the complaint shall state concisely the facts upon which the claim or action is based and shall set forth:

(1) The address of the claimant and the claimant's attorney, if any;

(2) The time and place of the circumstances giving rise to the claim or action;

(3) The state ~~department, agency, or institution in which the claim originated~~ whose action or inaction led to the origination of the claim or action;

(4) The amount claimed or relief sought; and

(5) All averments of fact necessary to state a cause of action against a ~~private person or corporation~~ the state under this subchapter.

(c) If the claim or action is based upon a contract or other instrument in writing, a copy of the contract or instrument in writing shall be attached to the complaint and the copies filed with the director.

~~(d)(1) In the complaint the~~ The claimant shall state in the complaint whether his or her claim has been presented to any state department, or officer thereof, and if so, when presented, to whom, and what action was taken thereon.

~~(2) The claimant shall further state~~ whether he or she has received any payment on account of ~~such~~ the claim or action and, if so, the amount received.

~~(3)(A)(2)(A)~~ The claimant also shall state whether any other another person or corporation business entity has any an absolute or contingent interest in his or her claim or action.

(B) If ~~any~~ a person or corporation is interested in the claim, the claimant shall state the name and address of that person or corporation having the interest, the nature of the interest, and how and when it was acquired.

(e) If the claimant is an executor, administrator, guardian, or other representative acting under judicial appointment, a duly certified copy of the record of appointment shall be filed with the complaint.

(f)(1) A claimant who is an inmate in the Department of Correction or the Department of Community Correction at the time the claim or action is filed is limited to no more than:

(A) Five (5) pages of written factual allegations and legal argument in his or her complaint; and

(B) Five (5) additional pages of exhibits to accompany his or her complaint.

(2)(A) An inmate filing a claim or action may file a motion to allow him or her to file additional pages of factual allegations, argument, or exhibits in excess of the limitations under subdivision (f)(1) of this section.

(B) A motion filed under this subdivision (f)(2) may be granted only if the commissioners of the Arkansas State Claims Commission find that the inmate needs the additional pages to fully explain his or her claim or action or if the claim or action is sufficiently complex to warrant additional pages.

(3)(A) If an inmate files a claim or action that exceeds the page limitations under this subsection, the commission shall:

(i) Assign the inmate's claim a docket number; and

(ii) Consider the inmate's claim filed, but mail the inmate's complaint and any attached exhibits back to him or her and give the inmate forty-five (45) days to:

(a) Resubmit his or her complaint and any attached exhibits in compliance with this subsection; or

(b) File a motion requesting permission to file a complaint and accompanying exhibits that exceed the page limitations under this subsection.

(B) The forty-five-day time period under this subsection is excludable time in calculating the statute of limitations for the inmate's claim or action.

(C) The commission may dismiss an inmate's complaint without prejudice if the inmate fails to:

(i) Resubmit a complaint and attached exhibits that meet the page limitation requirements of this subsection; or

(ii) File a motion requesting permission to file a complaint and attached exhibits that exceed the page limitation requirements of this subsection.

(D)(i) If the commission grants a motion for a complaint and accompanying exhibits that exceed the page limitation requirements of this subsection, the commission shall set out in the order granting the motion the revised timeline for the inmate to file his or her complaint and accompanying exhibits.

(ii) The commission may set a revised limit on the number of pages an inmate's complaint and accompanying exhibits may be.

19-10-209. Time for filing.

~~No claim may be considered and allowed by the~~ The Arkansas State Claims Commission shall not consider or allow a claim or action unless ~~it~~ the claim or action has been filed with the Director of the Arkansas State Claims Commission as provided by this subchapter within the period allowed by law for the commencement of an action for the enforcement of the same type of claim ~~against a private person or action.~~

19-10-210. Notice and hearings.

(a)(1) The Director of the Arkansas State Claims Commission shall notify each claimant and also the head of each state agency, ~~department, or institution~~ against which a claim or action is filed of the time and place set for the a hearing thereof on the claim or action, if a hearing on the matter is set by the Arkansas State Claims Commission.

(2) A party to a claim or action is not entitled to a hearing as a matter of law but may request a hearing before the commission.

~~(b)(1) In conducting hearings, the Arkansas State Claims Commission shall not be~~ The commission is not bound by the formal rules of evidence and shall conduct all hearings publicly and in a fair and impartial manner, giving the parties full opportunity for presentation of evidence, cross-examination of witnesses, and argument.

(2) To the extent practicable, the commission shall adopt the procedure used by the circuit courts, and ~~its~~ a hearing before the commission shall be conducted in a judicial manner.

(c) Hearings on a motion filed by a party shall be set:

(1) Upon request of one (1) of the parties; and

(2) If the commission finds that oral argument or witness testimony, or both, will benefit the commission in deciding on the motion.

19-10-211. Appeals of decisions - Jurisdiction - Time periods to file.

~~(a)(1) A decision of the Arkansas State Claims Commission may be appealed only to the General Assembly.~~

~~(b) When any party to a claim before the commission is aggrieved by the decision of the commission concerning such claim, the aggrieved party may, on a form designed by the commission:~~

~~(1) Within forty (40) days after the decision is rendered, file with the commission a notice of appeal of the decision to the General Assembly; or~~

~~(2) Within forty (40) days after the decision is rendered, file with the commission a motion for reconsideration requesting the commission to reconsider its decision; and~~

~~(3) Within twenty (20) days after commission reconsideration or denial of the motion for reconsideration, file with the commission a notice~~

~~of appeal of the decision to the General Assembly. Within forty (40) days after the Arkansas State Claims Commission issues a final order on a claim or action before the commission, a party to the claim or action may file with the commission a:~~

(A) Notice of appeal of the final order to the General Assembly; or

(B)(i) Motion requesting that the commission reconsider its final order.

(ii)(a) If a motion for reconsideration is denied, a party may file with the commission a notice of appeal of the claim to the General Assembly within twenty (20) days of entry of the order denying the motion for reconsideration.

(b) Subdivision (a)(1)(B)(ii)(a) of this section applies only if the commission's reconsideration constitutes a final order.

(2) The commission shall advise parties of the right of appeal under this section when the commission notifies the parties of the commission's final order.

(3) The General Assembly has exclusive jurisdiction to hear appeals under this section.

~~(e)(b)(1) The commission shall, in a timely manner,~~ timely notify the ~~Legislative Council or the appropriate committee of the~~ General Assembly and all parties to the claim or action when ~~any~~ a notice of appeal to the General Assembly is filed with the commission.

~~(d) When the commission notifies parties of a decision of the commission, it shall advise the parties of the right of appeal.~~

(2)(A) Notice provided to the General Assembly under subdivision (b)(1) of this section terminates the commission's jurisdiction over the claim or action.

(B) Unless ordered to do so by the General Assembly, the commission is prohibited from doing anything further on the claim or action aside from ordinary ministerial duties.

(3) The commission shall regain jurisdiction over the claim or action if, in consideration of an appeal of a final order, the General Assembly sends the claim or action back to the commission:

(A) For further proceedings consistent with any order of

the General Assembly; or

(B) To notify the claimant that the award has been upheld, reversed, or amended.

19-10-212. Reports of state agency liability — ~~Definition.~~

~~(a)(1) As used in this section, “state agency” means a department, office, board, commission, or institution of this state, including a state-supported institution of higher education.~~

~~(2) When a state agency admits liability to a claim filed with the Arkansas State Claims Commission, the state agency shall file a written report of the claim with the Litigation Reports Oversight Subcommittee of the Legislative Council if the claim:~~

~~(A)(1) Involves a contract with the state agency; or~~

~~(B)(2) Exceeds fifteen thousand dollars (\$15,000).~~

~~(3)(b) The state agency shall include in its report a concise statement of facts with an explanation of the state agency’s liability.~~

~~(4)(c) The state agency shall file its report within thirty (30) days after the claim or action has been adjudicated and a final order has been issued by the ~~Arkansas State Claims Commission~~ commission.~~

~~(b) The Office of the Arkansas Lottery shall file its report under subsection (a) of this section with the Legislative Council.~~

19-10-213. ~~Agency~~ State agency to pay claim.

~~(a) In the event that any claim authorized herein~~ When a claim or action is determined to be a valid claim or action against the state under this chapter and the claim or action is to be paid from funds not in the State Treasury, the ~~Clerk~~ Director of the Arkansas State Claims Commission shall notify the state agency against which the claim or action is to be charged of the amount of ~~such claims~~ the claim or action.

~~(b) Upon receipt of such~~ the notification under subsection (a) of this section, the state agency shall ~~forthwith~~ deliver a check to the ~~clerk~~ director who shall deposit the ~~same~~ funds as a nonrevenue receipt into the Miscellaneous Revolving Fund from which ~~he or she~~ the director shall disburse the amount of the claim or action to the claimant.

19-10-214. Effect on liens.

(a) Arkansas State Claims Commission awards are state property and therefore:

~~(1) liens may~~ Liens do not attach to commission awards; and

~~(2) nor may an award be assigned~~ A commission award is not assignable.

(b)(1) If the commission and the General Assembly approve appeals or claims or actions above ~~seven thousand five hundred dollars (\$7,500)~~ fifteen thousand dollars (\$15,000) and name as payees, in addition to the claimant, other individuals or entities who would normally have liens in a court of law, other than insurance company ~~claims for~~ subrogation claims, then the commission may deposit the amount approved ~~in~~ into the registry of the Pulaski County Circuit Court.

(2) After reasonable notice to the claimant and any named payees, the court shall establish the validity and priority to the moneys upon petition of the claimant or any named payee.

19-10-215. Restrictions on awards.

(a) With the exception of death and disability benefit claims paid under § 21-5-701 et seq., ~~no award may be paid~~ the Arkansas State Claims Commission shall not pay an award in excess of fifteen thousand dollars (\$15,000).

(b) If ~~the~~ an award is greater than fifteen thousand dollars (\$15,000), ~~the claim shall be referred~~ the commission shall refer the claim or action to the General Assembly for approval and, if approved, an appropriation.

19-10-216. ~~Commission decisions~~ Final orders – Findings of fact and conclusions of law required.

(a)(1) When the Arkansas State Claims Commission dismisses a claim or action with a final order or issues a final ~~adjudication~~ order of a claim or action on the merits, the commission shall set forth specific findings of fact and conclusions of law to support its decision.

(2) Citations to a party's motion or argument do not fulfill the requirements of this subsection unless otherwise supported by an explanation, with particularity, as to why the party's motion or argument is determinative to the outcome of the claim or action.

(3) When the commission bases its decision on a specific rule of civil procedure, rule of evidence, statute, or controlling appellate court decision, the commission shall cite the rule, statute, or appellate court decision.

(4) ~~A claim will not be accepted by the~~ The General Assembly shall not accept a claim or action on appeal that when the claim or action has as its final adjudication findings of fact and conclusions of law that do not comply with this section.

(b) Failure to comply with this section shall result in the General Assembly's sending the claim or action back to the commission for ~~reconsideration~~ further action until the requirements of subsection (a) of this section are met.

(c) A claim or action filed by a person who at the time of filing is an inmate of the Department of Correction is exempted from the requirements of this section.

(d) The findings of fact and conclusions of law contained in a final order under this section are presumed to be correct for the purposes of review by or appeal to the General Assembly.

19-10-217. Motions – Grounds required to preserve for appeal.

(a) If the Arkansas State Claims Commission denies a motion, the party whose interests were adversely affected by the commission's denial may appeal the denial under § 19-10-211 so long as the legal issue or factual issue in dispute was preserved for appeal with a specific ruling, in writing, by the commission.

(b)(1)(A) It is the responsibility of the party whose interests were adversely affected by the commission's ruling on the motion to ask the commission to file a written order denying the motion if the commission had previously denied the motion and has not already filed a written order on the motion before the commission issues its final order.

(B) If a party requests that the commission file a written order denying a motion under this subsection, the commission shall do so before issuing a final order.

(2) If the basis of a ground for appeal by a party is that a motion was erroneously granted, a filed written order by the commission is not necessary.

19-10-218. Interlocutory appeals prohibited.

(a) A party shall not file, and the Arkansas State Claims Commission shall not entertain, an interlocutory appeal of a legal issue.

(b)(1) The Director of the Arkansas State Claims Commission shall reject an interlocutory motion.

(2) An interlocutory motion shall not be included in the record of the case.

(c) All legal issues or factual issues in dispute that have been raised and addressed by the commission may be included in a party's appeal of the commission's final order.

19-10-219. Small claims adjudication.

(a)(1) The Arkansas State Claims Commission may establish a small claims adjudication process for claims or actions seeking one thousand dollars (\$1,000) or less.

(2) The small claims adjudication process shall provide that claims or actions be given docket priority, and the use of informal discovery, hearings utilizing teleconferencing or other off-site communications technology, and relaxed procedural rules are encouraged to facilitate efficient and timely resolution.

(b)(1) A claim or action seeking one thousand dollars (\$1,000) or less may be:

(A) Assigned to be heard by one (1) commissioner of the commission; and

(B) Decided by the commissioner on the basis of the pleadings alone.

(2) If a claimant objects to having the claim or action heard as a small claims adjudication under this section, the claimant may request that the claim or action be heard in the usual manner for similar claims or actions.

(c) Before a proposed written final order of a small claims adjudication under this section is considered final for the purposes of award or appeal, the proposed written final order shall be reviewed by a panel consisting of:

(1) The commissioner of the commission assigned to the claim or

action; and

(2) Two (2) other commissioners of the commission.

19-10-220. Special masters authorized.

(a) The Arkansas State Claims Commission may appoint a special master with specialized knowledge and skill to assist the commission in achieving a more timely resolution of complex litigation arising from a claim or action.

(b)(1) All or part of a special master's findings may be included as part of or in addition to a commission's final order.

(2) The special master's findings, if disputed by a party, may be raised on appeal.

19-10-221. Abuse of process by litigants.

An inmate in the Department of Correction or the Department of Community Correction who has filed more than three (3) unsuccessful claims or actions under this subchapter within a period of two (2) years may have his or her subsequent claims or motions dismissed by the Arkansas State Claims Commission upon receipt as abuse of process, for one (1) year from the date of dismissal of the inmate's third unsuccessful claim.

19-10-222. Corporate or business entity to be represented by attorney.

A corporate or business entity created under the laws of this state or another state shall be represented at all times in a claim or action under this subchapter by an attorney licensed to practice law in this state.

19-10-223. Failure to exhaust available state or administrative remedy.

The Arkansas State Claims Commission may dismiss a claim or action without prejudice on the commission's own motion if the claimant has failed to submit with the claimant's initial complaint or claim filing documentation that the claimant has exhausted all available state or administrative remedies.

SECTION 3. Arkansas Code § 21-5-704 is amended to read as follows:

21-5-704. Payment of claim to covered public employees, their designated beneficiaries, or their survivors – Funds.

(a)(1)(A) The state shall pay to the ~~designated beneficiary or, if~~

~~there is no designated beneficiary, then to the surviving spouse or surviving children under twenty two (22) years of age or, if there is no surviving spouse or surviving children under twenty two (22) years of age, then to the surviving children twenty two (22) years of age or older or to the surviving parents~~ beneficiaries of any covered public employee who is killed in the official line of duty, the sum of fifty thousand dollars (\$50,000) with the following requirements for distribution of the award:

(i) If the covered public employee has a designated beneficiary or beneficiaries, the designated beneficiary or beneficiaries are entitled to the award, in whatever percentage indicated by the covered public employee;

(ii) Subject to subdivision (a)(1)(A)(iii) of this section, if the covered public employee has no designated beneficiary or beneficiaries, the award shall go to the covered public employee's surviving spouse;

(iii) If the covered public employee has a surviving spouse and surviving dependent children, the surviving spouse is entitled to fifty percent (50%) of the award, and the surviving dependent children are entitled to the other fifty percent (50%) of the award in equal shares; or

(iv) If the covered public employee is unmarried at the date of his or her death:

(a) The covered public employee's surviving dependent children split the award in equal shares;

(b) The covered public employee's children split the award in equal shares if there are no surviving dependent children;
or

(c) The covered public employee's surviving parents split the award in equal shares if there are no surviving children.

(B) In addition thereto, the municipality that employed the police officer or firefighter shall, upon certification of the amount by the police or fire department, pay ~~to the designated beneficiary or, if there is no designated beneficiary, then to the surviving spouse or surviving children under twenty two (22) years of age or, if there is no surviving spouse or surviving children under twenty two (22) years of age, then to the surviving children twenty two (22) years of age or older or to the surviving parents~~ beneficiaries of the deceased police officer or firefighter an

allowance for all sick leave, vacation, or other leave time accumulated to the credit of the police officer or firefighter at the time of his or her death, with the following requirements for distribution of the allowance:

(i) If the deceased police officer or firefighter has a designated beneficiary or beneficiaries, the designated beneficiary or beneficiaries are entitled to the allowance, in whatever percentage indicated by the covered public employee;

(ii) Subject to subdivision (a)(1)(B)(iii) of this section, if the deceased police officer or firefighter has no designated beneficiary or beneficiaries, the allowance shall go to the deceased police officer's or firefighter's surviving spouse;

(iii) If the deceased police officer or firefighter has a surviving spouse and surviving dependent children, the surviving spouse is entitled to fifty percent (50%) of the allowance and the surviving dependent children are entitled to the other fifty percent (50%) of the allowance in equal shares; or

(iv) If the deceased police officer or firefighter is unmarried at the date of his or her death:

(a) The deceased police officer's or firefighter's surviving dependent children split the allowance in equal shares;

(b) The deceased police officer's or firefighter's children split the allowance in equal shares if there are no surviving dependent children; or

(c) The deceased police officer's or firefighter's surviving parents split the allowance in equal shares if there are no surviving children.

(2)(A) ~~In the event~~ If a covered public employee ~~shall suffer~~ suffers an injury while engaged in the performance of official duties resulting in his or her total and permanent disability, the disabled covered public employee shall be entitled to the sum of ten thousand dollars (\$10,000) from the State of Arkansas upon establishing proof of the total and permanent disability.

(B) Proof of total and permanent disability shall be established by offering evidence that the covered public employee was unable to work in the employment position covered by this subchapter for a period of

more than one (1) year or that the covered public employee received a disability rating in excess of twenty-five percent (25%) from the Workers' Compensation Commission.

(b)(1) All allowances as provided for in this section for the designated beneficiary, surviving spouse, surviving children, or surviving parents of covered public employees killed while performing official duties, or allowances provided covered public employees who are totally and permanently disabled while performing official duties, shall be paid totally from state funds appropriated therefor.

(2)(A) Except as provided in subdivision (b)(2)(B) of this section, the funds shall not be reimbursed by transfer or charging the funds against any state funds allocated for turnback to cities or counties or distributed to the State Highway and Transportation Department Fund or distributed to any Department of Correction fund account or any other state department agency fund account other than the Arkansas State Claims Commission fund accounts and the Miscellaneous Revolving Fund or state funds levied for firefighters, police officers, employees of the Arkansas Department of Transportation, and employees of the Department of Correction for pension purposes.

(B)(i) Twenty-five thousand dollars (\$25,000) of the fifty thousand dollars (\$50,000) provided in subdivision (b)(2)(A) of this section shall be paid by the appropriate state department agency fund account.

(ii) The appropriate state department agency shall transfer the necessary funds to the Arkansas State Claims Commission fund accounts for payment.

(c) It is the intent of this subchapter that twenty-five thousand dollars (\$25,000) of the total obligation of providing the benefits provided by this subchapter, even though the funds are to be administered by the Arkansas State Claims Commission, are to be defrayed from state funds and are not to be charged against, or recovered against, any turnback moneys due the cities or counties of this state or allocated to the state highway system of this state or to the Department of Correction or any other state department agency fund account other than the Arkansas State Claims Commission fund accounts and the Miscellaneous Revolving Fund.

(d)(1) A person who claims a benefit under this section to which the beneficiaries of a deceased person are entitled shall submit a notarized

affidavit provided by the Arkansas State Claims Commission that:

(A) Lists all known surviving children of the decedent, their respective ages, last known addresses, and contact information; and

(B) Discloses the existence of any last will and testament of the decedent.

(2) If a person who claims a benefit fails to list all known surviving children as required by subdivision (d)(1)(A) of this section, the Arkansas State Claims Commission may require that the person return the benefit to the Arkansas State Claims Commission for further proceedings.

(e) As used in this section, "surviving dependent children" means children who have not yet reached the age of majority as of the date of the award and children who have a legal incapacity that renders them dependent even after reaching the age of majority.

SECTION 4. Arkansas Code § 21-5-705 is amended to read as follows:

21-5-705. Payment of claim to designated beneficiaries or survivors of certain specified public employees killed in the line of duty – Funds.

(a) The state shall pay the additional sum of one hundred fifty thousand dollars (\$150,000) to the ~~designated beneficiary, surviving spouse, or surviving children under twenty-two (22) years of age~~ qualified recipient or recipients of a:

(1) Police officer, wildlife enforcement officer, commissioned law enforcement officer or emergency response employee of the State Parks Division of the Department of Parks and Tourism, Department of Community Correction employee, employee of the Department of Correction, jailer, or coroner whose death occurred:

(A) After January 1, 2003; and

(B) Either:

(i) In the official line of duty as the result of a criminal or negligent action of another person or persons or as the result of the engagement in exceptionally hazardous duty; or

(ii) In the line of duty while the officer or employee was performing emergency medical activities;

(2) Firefighter, emergency medical technician, or employee of the Arkansas Forestry Commission killed after July 1, 1987, while responding to, engaging in, or returning from a fire, a rescue incident, a hazardous

material or bomb incident, an emergency medical activity, or simulated training thereof; and

(3)(A)(i) Firefighter killed in the line of duty after January 1, 2012, including death from leukemia, lymphoma, mesothelioma, and multiple myeloma and cancer of the brain, digestive tract, urinary tract, liver, skin, breast, cervix, thyroid, prostate, testicle, or a cancer that has been found by research and statistics to show higher instances of occurrence in firefighters than in the general population, if he or she was exposed to a known carcinogen as determined by the Department of Health with consideration to the findings of the International Agency for Research on Cancer while in the official line of duty.

(ii) Subdivision (a)(3)(A)(i) of this section does not include a firefighter who was diagnosed with cancer prior to the start of firefighter service.

(B) A death benefit under subdivision (a)(3)(A) of this section shall be limited to:

(i) A maximum of one hundred fifty thousand dollars (\$150,000) per individual death, including educational benefits provided in § 6-82-501 et seq.; and

(ii) A firefighter who is under sixty-eight (68) years of age.

(C)(i) The Firefighter Benefit Review Panel is created for the purpose of making recommendations to the Arkansas State Claims Commission regarding determinations of death benefits under subdivision (a)(3)(A) of this section for deaths associated with cancer.

(ii) The panel shall consist of the following seven (7) individuals to be appointed by the Governor:

(a) One (1) licensed oncologist;

(b)(1) Two (2) firefighters paid by the state, a county, or a municipality.

(2) One (1) firefighter under subdivision (a)(3)(C)(ii)(b)(1) of this section shall be appointed from a list of names submitted by the Arkansas Professional Fire Fighters Association;

(c)(1) Two (2) volunteer firefighters.

(2) One (1) firefighter under

subdivision (a)(3)(C)(ii)(c)(1) of this section shall be appointed from a list of names submitted by the Arkansas State Firefighters Association;

(d) One (1) fire chief who may be appointed from a list of names submitted by the Arkansas Association of Fire Chiefs; and

(e) One (1) citizen with experience in either cancer and healthcare professions or firefighter relations.

(iii)(a) Panel members shall serve a term of four (4) years.

(b) In the event of a vacancy in the membership of the panel, the Governor shall appoint a person meeting the applicable eligibility requirements of the vacated position to fill the vacancy for the remainder of the unexpired term.

(iv)(a) The panel shall hold at least one (1) regular meeting in each calendar year at a time and place determined by the panel.

(b) Special meetings may be called at the discretion of the chair selected under subdivision (a)(3)(C)(v) of this section.

(v) The panel shall select a chair and vice chair during the first annual meeting of each four-year term.

(vi) Four (4) members of the panel ~~shall constitute~~ constitute a quorum to transact business.

(vii) The members of the panel may receive expense reimbursement in accordance with § 25-16-901 et seq.

(viii) The panel shall:

(a) Render advisory opinions and reports concerning research and statistics that show higher instances of cancer among firefighters;

(b) Review claims for death benefits of firefighters who have died of cancer; and

(c) Make recommendations to the Arkansas State Claims Commission on death benefit awards under subdivision (a)(3)(A) of this section.

(D) This section:

(i) ~~Shall not be applied~~ Does not apply to any other

benefits granted by the state, a county, a city, or a municipality; and

(ii) Does not grant a cause of action against the state, a county, a city, or a municipality.

(b) In addition to the benefits provided for in subsection (a) of this section, the state shall pay the additional sum of twenty-five thousand dollars (\$25,000) to ~~the designated beneficiary, surviving spouse, or surviving children under twenty two (22) years of age~~ qualified recipient of any police officer, wildlife enforcement officer of the Arkansas State Game and Fish Commission, commissioned law enforcement officer of the State Parks Division of the Department of Parks and Tourism, Department of Community Correction employee, or employee of the Department of Correction:

(1) Who was wearing a bulletproof vest approved by the Director of the Department of Arkansas State Police; and

(2) Whose death occurred:

(A) After July 1, 1989; and

(B) In the official line of duty as the result of a criminal action of another person or persons.

(c)(1) Except as provided in subdivision (c)(2) of this section, the benefits shall be paid totally from state funds appropriated for these benefits. The funds shall not be reimbursed by a transfer or charging the funds against any state funds allocated for turnback to cities or counties or distributed to any other state department agency fund account other than the Arkansas State Claims Commission fund accounts and the Miscellaneous Revolving Fund.

(2)(A) Seventy-five thousand dollars (\$75,000) of the one hundred fifty thousand dollars (\$150,000) provided in subdivision (c)(1) of this section shall be paid by the appropriate state department agency fund account.

(B) The appropriate state department agency shall transfer the necessary funds to the Arkansas State Claims Commission fund accounts for payment.

(d) The additional benefits provided in this section shall be paid to the ~~designated beneficiary, surviving spouse, surviving children, or surviving parents~~ qualified recipient in ~~three (3)~~ four (4) equal annual payments, the first of which shall be paid immediately upon entry of the order awarding the benefits, and the next three (3) payments shall be paid in

July of the next three fiscal ~~year~~ years after the date of the original order of the Arkansas State Claims Commission establishing entitlement to additional payments ~~and annually thereafter~~.

(e) Determination of eligibility for the additional payments provided in this section shall be made by the Arkansas State Claims Commission in accordance with Arkansas State Claims Commission rules and procedures.

(f)(1) A person who claims a benefit as a qualified recipient under this section to which the beneficiaries of a deceased person are entitled shall submit a notarized affidavit provided by the Arkansas State Claims Commission that:

(A) Lists all known surviving children of the decedent, their respective ages, last known addresses, and contact information; and

(B) Discloses the existence of any last will and testament of the decedent.

(2) If a person who claims a benefit as a qualified recipient fails to list all known surviving children as required by subdivision (f)(1)(A) of this section, the Arkansas State Claims Commission may require that the person return the benefit to the Arkansas State Claims Commission for further proceedings.

(g) If a benefit under this section is payable to both the surviving spouse and other eligible persons such as surviving children, the Arkansas State Claims Commission shall hold a hearing to determine how the benefit shall be distributed among the eligible persons if those percentages are not already provided for by law.

(h) As used in this section:

(1) "Qualified recipient" means a beneficiary of an award or allowance under this section with the following priority for eligibility and distribution to a beneficiary:

(A) If the person has a designated beneficiary or beneficiaries, the designated beneficiary or beneficiaries are entitled to the award or allowance, in whatever percentage indicated by the covered public employee;

(B) Subject to subdivision (h)(1)(C) of this section, if the person has no designated beneficiary or beneficiaries, the award or allowance shall go to the person's surviving spouse;

(C) If the person has a surviving spouse and surviving

dependent children, the surviving spouse is entitled to fifty percent (50%) of the award or allowance and the surviving dependent children are entitled to the other fifty percent (50%) of the award or allowance in equal shares; or

(D) If the person is unmarried at the date of his or her death:

(i) The person's surviving dependent children split the award or allowance in equal shares;

(ii) The person's children split the award or allowance in equal shares if there are no surviving dependent children; or

(iii) The person's surviving parents split the award or allowance in equal shares if there are no surviving children; and

(2) "Surviving dependent children" means children who have not yet reached the age of majority as of the date of the award and children who have a legal incapacity that renders them dependent even after reaching the age of majority.

/s/Gonzales