

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

State of Arkansas
93rd General Assembly
Regular Session, 2021

A Bill

SENATE BILL 16

By: Senator D. Sullivan
By: Representative Gonzales

For An Act To Be Entitled

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

Subtitle

TO AMEND CERTAIN PROVISIONS OF INITIATED ACT 4 OF 1948; AND TO DECLARE AN EMERGENCY.

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

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

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

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



employment or occupation; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) As used in this subsection:

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

(i) A firefighter;

(ii) A member of law enforcement;

(iii) An emergency responder;

(iv) An emergency medical professional;

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

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

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

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

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

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

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

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

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

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