

1 **State of Arkansas**
2 **78th General Assembly**
3 **Regular Session, 1991**
4 **By: Representative Hinshaw**

A Bill

HOUSE BILL

For An Act To Be Entitled

8 "AN ACT TO AMEND SUBSECTION (f) OF ARKANSAS CODE § 11-10-
9 210 TO EXCLUDE FROM THE TERM 'EMPLOYMENT' UNDER THE
10 ARKANSAS EMPLOYMENT SECURITY LAW SERVICES OF INDIVIDUALS
11 WHO SELL CONSUMER PRODUCTS FROM THEIR OWN HOMES AS 'DIRECT
12 SELLERS'; AND FOR OTHER PURPOSES."

13
14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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16 SECTION 1. Subsection (f) of Arkansas Code § 11-10-210 is hereby
17 amended to read as follows:

18 "(f) The term "employment" shall not include:

19 (1) Service performed by an individual in agricultural labor,
20 except as provided in subdivision (a)(5) of this section. For purposes of
21 subdivision (f)(1), the term "agricultural labor" means any service performed
22 which was agricultural labor as defined in this subsection prior to January 1,
23 1972, and remunerated service performed:

24 (A) On a farm, in the employ of any person, in connection
25 with cultivating the soil, or in connection with raising or harvesting any
26 agricultural or horticultural commodity, including the raising, shearing,
27 feeding, caring for, training, and management of livestock, bees, poultry, and
28 furbearing animals and wildlife;

29 (B) In the employ of the owner or tenant or other operator
30 of a farm, in connection with the operation, management, conservation,
31 improvement, or maintenance of the farm and its tools and equipment, or in
32 salvaging timber or clearing land of brush and other debris left by a
33 hurricane if the major part of the service is performed on a farm;

34 (C) In connection with the production or harvesting of any
35 commodity defined as an agricultural commodity in 15(g) of the Agricultural

1 Marketing Act, as amended, or in connection with the ginning of cotton, or in
2 connection with the operation or maintenance of ditches, canals, reservoirs,
3 waterways, not owned or operated for profit, used exclusively for supplying
4 and storing water for farming purposes;

5 (D) (i) In the employ of the operator of a farm in handling,
6 planting, drying, packing, packaging, freezing, grading, storing, or
7 delivering to storage or to market or to a carrier for transportation to
8 market, in its unmanufactured state, any agricultural or horticultural
9 commodity, but only if the operator produced more than one-half (1/2) of the
10 commodity with respect to which the service is performed;

11 (ii) In the employ of a group of operators of farms,
12 or a cooperative organization of which the operators are members, in the
13 performance of service described in subdivision (f) (1) (D) (i) of this section,
14 but only if the operators produced more than one-half (1/2) of the commodity
15 with respect to which the service is performed;

16 (iii) The provisions of subdivisions (f) (1) (D) (i) and
17 (f) (1) (D) (ii) of this section shall not be deemed to be applicable with
18 respect to service performed in connection with commercial canning or
19 commercial freezing or in connection with any agricultural or horticultural
20 commodity after its delivery to a terminal market for distribution for
21 consumption; or

22 (E) On a farm operated for profit if the service is not in
23 the course of the employer's trade or business. As used in subdivision (f) (1)
24 of this section, the term "farm" includes stock, dairy, poultry, fruit,
25 furbearing animals, and truck farms, plantations, ranches, nurseries, ranges,
26 greenhouses or other similar structures used primarily for the raising of
27 agricultural or horticultural commodities, and orchards;

28 (2) Domestic service in a private home, local college club, or
29 local chapter of a college fraternity or sorority unless performed for an
30 employing unit which paid cash remuneration of one thousand dollars (\$1,000)
31 or more to individuals employed in domestic service in any calendar quarter in
32 the calendar year or the preceding calendar year;

33 (3) Service not in the course of the employer's trade or business
34 performed in any calendar quarter by an employee, unless the cash remuneration
35 paid for such service is fifty dollars (\$50.00) or more and the service is

1 performed by an individual who is regularly employed by the employer to
2 perform such service. For purposes of this section, an individual shall be
3 deemed to be regularly employed by an employer during a calendar quarter only
4 if:

5 (A) On each of some twenty-four (24) days during such
6 quarter the individual performs for the employer for some portion of the day
7 service not in the course of the employer's trade or business; or

8 (B) The individual was regularly employed as determined
9 under subdivision (f) (3) (A) of this section by such employer in the
10 performance of such service during the preceding calendar quarter;

11 (4) Service performed on or in connection with a vessel or
12 aircraft not an American vessel or American aircraft if the employee is
13 employed on and in connection with such vessel or aircraft when outside the
14 United States;

15 (5) Service performed by an individual in the employ of his son,
16 daughter, or spouse, and service performed by a child under the age of twenty-
17 one (21) years in the employ of his father or mother;

18 (6) Service performed in the employ of the United States
19 Government or of an instrumentality of the United States which is:

20 (A) Wholly or partially owned by the United States; or

21 (B) Exempt from the tax imposed by 3301 of the Federal
22 Unemployment Tax Act by virtue of any provision of law which specifically
23 refers to that section or the corresponding section of prior law in granting
24 the exemption;

25 (7) Service performed in the employ of any political subdivision
26 of the state or any instrumentality of any political subdivision which is
27 wholly owned by one (1) or more political subdivisions of the state;

28 (8) Service performed by an individual for any political caucus,
29 committee, headquarters, or other groups of like nature not established on a
30 permanent basis;

31 (9) Service performed by an individual as an employee or employee
32 representative as defined in 1 of the Railroad Unemployment Insurance Act;

33 (10) (A) Service performed in any calendar quarter in the employ
34 of any organization exempt from income tax under 501(a) of the Internal
35 Revenue Code of 1954, other than an organization described in 401(a) or under

1 521 of the Internal Revenue Code of 1954 if the remuneration for such service
2 is less than fifty dollars (\$50.00); or

3 (B) Service performed by an individual under the age of
4 twenty-two (22) years who is enrolled at a nonprofit or public educational
5 institution which normally maintains a regular faculty and curriculum and
6 normally has a regularly organized body of students in attendance at the place
7 where its educational activities are carried on as a student in a full-time
8 program, taken for credit at the institution, which combines academic
9 instruction with work experience, if the service is an integral part of the
10 program and the institution has so certified to the employer, except that
11 subdivision (f) (10) (B) of this section shall not apply to service performed in
12 a program established for or on behalf of an employer or group of employers;
13 or

14 (C) Service performed in the employ of a school, college,
15 or university if the service is performed by a student who is enrolled and is
16 regularly attending classes at the school, college, or university; or

17 (D) Service performed in the employ of a hospital if the
18 service is performed by a patient of the hospital as defined in 11-10-221;

19 (11) Service performed in the employ of a foreign government,
20 including service as a consular or other officer or employee or a
21 nondiplomatic representative;

22 (12) Service performed in the employ of an instrumentality wholly
23 owned by a foreign government:

24 (A) If the service is of a character similar to that
25 performed in foreign countries by employees of the United States Government or
26 of an instrumentality thereof; and

27 (B) If the United States Secretary of State shall certify
28 to the United States Secretary of the Treasury that the foreign government,
29 with respect to whose instrumentality exemption is claimed, grants an
30 equivalent exemption with respect to similar service performed in the foreign
31 country by employees of the United States Government and of instrumentalities
32 thereof;

33 (13) Service performed as a student nurse in the employ of a
34 hospital or a nurses' training school by an individual who is enrolled and is
35 regularly attending classes in a nurses' training school chartered or approved

1 pursuant to state law and service performed as an intern in the employ of a
2 hospital by an individual who has completed a four-year course in a medical
3 school chartered or approved pursuant to state law;

4 (14) Service performed by an individual for any person or
5 employing unit, as an insurance agent, or as an insurance solicitor, if all
6 service performed by the individual for the person, or employing unit, is
7 performed for remuneration solely by way of commission;

8 (15) Any service performed by an individual for any person or
9 employing unit, as a real estate agent, or as a real estate solicitor or
10 salesman, if all service performed by the individual for the person or
11 employing unit is performed for remuneration solely by way of commission;

12 (16) (A) Service performed by an individual under the age of
13 eighteen (18) years in the delivery or distribution of newspapers or shopping
14 news, not including delivery or distribution to any point for subsequent
15 delivery or distribution;

16 (B) Service performed by an individual in, and at the time
17 of, the sale of newspapers or magazines to ultimate consumers, under an
18 arrangement under which the newspapers or magazines are to be sold by him at a
19 fixed price, his compensation being based on the retention of the excess of
20 the price over the amount at which the newspapers or magazines are charged to
21 him, whether or not he is guaranteed a minimum amount of compensation for the
22 service or is entitled to be credited with the unsold newspapers or magazines
23 turned back;

24 (17) Service performed in the employ of an international
25 organization;

26 (18) Service performed by an individual in or as an officer or
27 member of the crew of a vessel while it is engaged in the catching, taking,
28 harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea,
29 sponges, seaweed, or other aquatic forms of animal and vegetable life,
30 including service performed by any such individual as an ordinary incident to
31 any such activity, except:

32 (A) Service performed in connection with the catching or
33 taking of salmon or halibut for commercial purposes; and

34 (B) Service performed on or in connection with a vessel of
35 more than ten (10) net tons, determined in the manner provided for determining

1 the register tonnage of merchant vessels under the laws of the United States;
2 or

3 (19) Service which is performed by a nonresident alien individual
4 for the period he is temporarily present in the United States as a non-
5 immigrant under subparagraph (F) or (J) of 101(a)(15) of the Immigration and
6 Nationality Act, as amended, and which is performed to carry out the purpose
7 specified in subparagraph (F) or (J), as the case may be.

8 (20) Service performed by an individual who is engaged in the
9 trade or business of selling consumer products to consumers in the home or
10 otherwise than in a permanent wholesale or retail establishment, if he is
11 entitled to retain as his remuneration for the service performed substantially
12 all the difference between the price at which he purchases the product and the
13 price at which he sells the product, provided the service is exempt from
14 coverage by the Federal Unemployment Tax Act."

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16 SECTION 2. All provisions of this act of general and permanent nature
17 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
18 Revision Commission shall incorporate the same in the Code.

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20 SECTION 3. Severability. In the event any provision of this act is
21 declared or adjudged to be invalid or unconstitutional, such declaration or
22 adjudication shall not affect the remaining portions of this act which can be
23 given effect without the invalid or unconstitutional provision. The remaining
24 portions of this act shall remain in full force and effect as if the portion
25 declared or adjudged invalid or unconstitutional was not originally a part of
26 the act.

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28 SECTION 4. All laws and parts of laws in conflict with this act are
29 hereby repealed.

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