

1 **State of Arkansas**
2 **78th General Assembly**
3 **Regular Session, 1991**

A Bill

HOUSE BILL

4 **By: Representatives Willems and Stewart**

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6

7

For An Act To Be Entitled

8 "AN ACT TO AMEND VARIOUS PROVISIONS OF THE ARKANSAS
9 EMPLOYMENT SECURITY LAW TO RENAME THE ARKANSAS EMPLOYMENT
10 SECURITY DIVISION AS THE ARKANSAS EMPLOYMENT SECURITY
11 DEPARTMENT; AND FOR OTHER PURPOSES."

12

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

14

15 SECTION 1. Arkansas Code Annotated § 11-10-106(d) and (e) are hereby
16 amended to read as follows:

17 "(d) Disclosure of Information. If any employee or member of the
18 Board of Review, the director, or any employee of the director, in violation
19 of the provisions of 11-10-314, makes any disclosure of information obtained
20 from any employing unit or individual in the administration of this chapter;
21 if any person who has obtained any list of applicants for work, or of
22 claimants or recipients of benefits, under this chapter shall use or permit
23 the use of the list for any political purpose; or if any person who has
24 lawfully obtained information from the Employment Security Department which
25 was obtained from any employing unit or individual pursuant to the
26 administration of this chapter makes an unlawful use or disclosure of such
27 information or uses or discloses such information in a manner inconsistent
28 with the purposes for which it was lawfully obtained, then that person shall
29 be fined not less than twenty dollars (\$20.00) nor more than two hundred
30 dollars (\$200) or imprisoned for not longer than ninety (90) days, or both.

31 (e) Prosecution and Appeal. Prosecutions for the violation of any of
32 the provisions of this act may be begun by the filing of information in any
33 court having jurisdiction, without bond for costs, by the director, any field
34 auditor, or other duly authorized agent of the director. Appeals may be
35 prosecuted from any verdicts or rulings contrary to the state, without appeal

1 bonds, by the filing of a petition for appeal by any director, auditor, or
2 agent."

3

4 SECTION 2. Arkansas Code Annotated § 11-10-206 is hereby amended to
5 read as follows:

6 "11-10-206. Director.

7 As used in this chapter, unless the context clearly requires otherwise,
8 'director' means the Director of the Arkansas Employment Security
9 Department."

10

11 SECTION 3. Arkansas Code Annotated § 11-10-207 is hereby amended to read
12 as follows:

13 "11-10-207. Regulations.

14 All regulations previously promulgated under this chapter shall be
15 enforceable by the Director of the Employment Security Department and shall
16 remain in full force and effect unless or until such time as amended by the
17 Director of the Employment Security Department."

18

19 SECTION 4. Arkansas Code Annotated § 11-10-214(c) is hereby amended to
20 read as follows:

21 "(c) An individual's week of unemployment shall be deemed to commence
22 the day on which he registers at an Employment Security Department Office,
23 except as the director may, by regulation, otherwise prescribe."

24

25 SECTION 5. Arkansas Code Annotated § 11-10-301 is hereby amended to
26 read as follows:

27 "11-10-301. Employment Security Department - Creation - Director.

28 (a) There is created a department to be known as the Arkansas
29 Employment Security Department which shall be administered by a full-time
30 salaried director who shall be appointed by and serve at the pleasure of the
31 Governor. The director shall have resided in the state for at least five (5)
32 years and shall be a qualified elector.

33 (b) Before entering upon his duties, the director shall take and
34 subscribe, and file in the Office of the Secretary of State, an oath to
35 support the Constitution of the United States and the Constitution of the

1 State of Arkansas and to faithfully perform the duties of the office upon
2 which he is about to enter.

3 (c) The director shall have such power and authority as he deems
4 reasonable and proper for the effective administration of this chapter and
5 will faithfully perform his duties and properly account for all funds received
6 and disbursed by him under authority of this chapter.

7 (d) The director shall be agent for service of process for all legal
8 actions arising under this chapter or to which the Employment Security
9 Department shall be named a party.

10 (e) The Director of the Employment Security Department shall procure an
11 official seal, and every paper executed by the director in pursuance of law
12 and sealed with the seal of his office shall be received in evidence in any
13 court or other tribunal in this state and may be recorded in the same manner
14 and with like effect as instruments regularly acknowledged."

15

16 SECTION 6. Arkansas Code Annotated § 11-10-302 is hereby amended to
17 read as follows:

18 "11-10-302. Reporting.

19 (a) (1) To ensure that job-finding assistance is being adequately
20 provided to food stamp applicants and recipients, the Employment Security
21 Department shall periodically station appropriate staff for some portion of a
22 work day in each county or district office of the appropriate division of the
23 Department of Human Services as determined by the director of the department.

24

25 (2) The director of the Employment Security Department and the deputy
26 director of the appropriate division of the Department of Human Services shall
27 enter into a written agreement regarding the provision of the services to food
28 stamp applicants, provided the Employment Security Department has federal
29 funds available and specifically identified for use in providing such
30 services.

31 (b) (1) The Employment Security Department shall report quarterly to the
32 Arkansas Legislative Council the number of registrants or recipients of food
33 stamps interviewed, the number of job referrals made, and the number of
34 registrants or recipients of food stamps placed in jobs.

35 (2) This report shall be made for each county or district office;

1 provided the Employment Security Department has federal funds available and
2 specifically identified for use in providing such services."

3

4 SECTION 7. Arkansas Code Annotated § 11-10-303(a) is hereby amended to
5 read as follows:

6 "(a) The Director of the Employment Security Department is authorized
7 to formulate, adopt, and administer plans to provide the regular employees of
8 the Employment Security Department, as an incident of their employment, with
9 group life insurance or insurance against the payment of medical and hospital
10 expenses or any similar type of insurance."

11

12 SECTION 8. Arkansas Code Annotated § 11-10-303(c) is hereby amended to
13 read as follows:

14 "(c) If any plan adopted requires contributions by the employees, the
15 director may provide for the withholding of the amount of the employees'
16 contribution from their salaries. However, the contributing share of funds
17 paid by the Employment Security Department as the employer shall come from
18 funds granted to the agency by the United States Department of Labor for such
19 purposes."

20

21 SECTION 9. Arkansas Code Annotated § 11-10-303(f) is hereby amended to
22 read as follows:

23 "(f) Participation by any employee of the Employment Security
24 Department in any plan adopted shall be on a voluntary basis at the option of
25 the employee."

26

27 SECTION 10. Arkansas Code Annotated § 11-10-304(a) is hereby amended to
28 read as follows:

29 "(a) The Arkansas State Employment Service is established in the
30 Employment Security Department."

31

32 SECTION 11. Arkansas Code Annotated § 11-10-304(c) is hereby amended to
33 read as follows:

34 "(c) The provisions of that act of Congress are accepted by this state,
35 and the Employment Security Department is designated and constituted the

1 agency of this state for the purposes of that act."

2

3 SECTION 12. Arkansas Code Annotated § 11-10-304(f) is hereby amended to
4 read as follows:

5 "(f) In addition to the services and activities otherwise authorized by
6 this law, the Employment Security Department may perform, or contract for the
7 performance of, such other services and activities as shall be specified in
8 contracts for payment or reimbursement of the costs thereof made with the
9 United States Secretary of Labor, with any federal, state, or local public
10 agency, or administrative entity, or with any employer or private for-profit
11 or nonprofit organization under, in accordance with, and in furtherance of the
12 purposes of the Job Training Partnership Act, Public Law 97-300, as amended."

13

14 SECTION 13. Arkansas Code Annotated § 11-10-305 is hereby amended to
15 read as follows:

16 "11-10-305. Employment Security Advisory Council - Creation.

17 (a) The Governor shall appoint a state Employment Security Advisory
18 Council, composed of men and women, including an equal number of employer
19 representatives and employee representatives, who may be fairly regarded as
20 representative because of their vocation, employment, or affiliations, and of
21 such members representing the general public as the Governor may designate.

22 (b) The council shall aid the Director in reviewing the unemployment
23 insurance and the employment service programs as to their content, adequacy,
24 and effectiveness and to make recommendations for their improvement.

25 (c) The advisory council shall meet at least once each calendar quarter
26 and, in addition, as frequently as the Director deems necessary.

27 (d) The advisory council shall make reports of its meetings which shall
28 include a record of its discussions and its recommendations. The Director
29 shall make the reports available to any interested persons or groups.

30 (e) The members of the advisory council shall be paid not to exceed the
31 sum of forty-five dollars (\$45.00) a day when attending meetings in connection
32 with their duties as members and shall be reimbursed for any travel or other
33 expense incurred in accordance with the travel regulations applicable to the
34 employees of the Employment Security Department."

35

1 SECTION 14. Arkansas Code Annotated § 11-10-306(g) is hereby amended to
2 read as follows:

3 "(g) The director, in addition to other provisions of this chapter, is
4 authorized to set up and maintain in the Employment Security Department a unit
5 known as 'the enforcement unit'.

6 (1) The unit may be maintained by a staff adequate to make
7 investigations, hold hearings, and take testimony in connection with the
8 enforcement of this chapter to the end that fraudulent claims on the part of
9 claimants and the violation of this chapter on the part of employers may be
10 curtailed to the minimum possible.

11 (2) The employees of the enforcement unit shall have authority to make
12 audits, investigations of records and books of employers; hold hearings;
13 administer oaths; and subpoena witnesses, papers, books, and records in
14 connection with the investigations.

15 (3) The subpoena shall be effective in any part of this state, and any
16 circuit court either in term time or vacation may by order require additional
17 witnesses or the production of other relevant evidence subpoenaed by the
18 director or any other person duly authorized by the director. The court may
19 compel obedience to its order by procedure of contempt."
20

21 SECTION 15. Arkansas Code Annotated § 11-10-311 is hereby amended to
22 read as follows:

23 "11-10-311. Employment stabilization.

24 The Director, with the advice and aid of the Employment Security
25 Advisory Council, shall take all appropriate steps to reduce and prevent
26 unemployment; to encourage and assist in the adoption of practical methods of
27 vocational training, retraining, and vocational guidance; to investigate,
28 recommend, advise, and assist in the establishment and operation by
29 municipalities, counties, planning districts, school districts, and the state
30 of programs for public works to be used in times and places of economic
31 downturn and high unemployment for the purpose of promoting the employment of
32 unemployed and underemployed workers throughout the state; and to these ends,
33 to carry on research and such investigations as he shall deem necessary and to
34 publish the results thereof."
35

1 SECTION 16. Arkansas Code Annotated § 11-10-313(b) is hereby amended to
2 read as follows:

3 "(b) Any and all wage and employment information necessary for the
4 carrying out of the arrangements shall be promptly provided by employers upon
5 request by the director. Willful failure to promptly provide the information
6 shall subject an employer to the penalties set forth in 11-10-106(b)."

7

8 SECTION 17. Arkansas Code Annotated § 11-10-314(a)(2) is hereby amended
9 to read as follows:

10 "(2) The information shall not be used in any action or proceeding
11 before any court, administrative tribunal, or body, except those created by
12 this law, unless the Employment Security Department is a party, a real party
13 in interest, or a complainant therein or unless the litigation involves
14 criminal actions brought under provisions of this law. This information shall
15 not be otherwise disclosed or be open to public inspection in any manner
16 revealing the individual's or employing unit's identity."

17

18 SECTION 18. Arkansas Code Annotated § 11-10-314(b) is hereby amended to
19 read as follows:

20 "(b)(1) Information from the records of the Employment Security
21 Department which concerns a claim for benefits shall be available for
22 inspection and copying by any interested party or his legal representative to
23 the extent necessary for the proper representation of his position in any
24 proceeding under this law.

25 (2) Notwithstanding any other provision of this law or any other law,
26 any claimant may be supplied, subject to such restrictions as the director may
27 by regulation prescribe, with any information contained in his unemployment
28 insurance benefit payment record or on his most recent monetary determination,
29 any individual or employer may be provided any information from the records of
30 the Employment Security Department to the extent that the information was
31 provided by him, and any job applicant may be provided with evidence of his
32 registration for work."

33

34 SECTION 19. Arkansas Code Annotated § 11-10-314(e)(1) is hereby amended
35 to read as follows:

1 "(e)(1) Upon request of a public agency administering or supervising
2 the administration of a state plan of Aid to Families with Dependent Children
3 approved under Part A of Title IV of the Social Security Act, the
4 administration of a state plan of medical assistance approved under Title XIX
5 of the Social Security Act, the administration of a state plan of Food Stamps
6 approved under the Federal Food Stamp Act, Public Law 95-113, or a public
7 agency charged with any duty or responsibility authorized or required under
8 the Child Support and Establishment of Paternity Program provisions of Part D
9 of Title IV of the Social Security Act, or by officers or employees of the
10 U.S. Department of Agriculture, the director shall furnish to the public
11 agency information contained in the files of the Employment Security
12 Department with respect to any individual specified in the request as to
13 whether the individual is receiving, has received, or has made application for
14 unemployment compensation, the date the individual was determined eligible or
15 ineligible, the date the individual's claim was exhausted, the weekly benefit
16 amount actually paid and the date paid, the individual's weekly benefit
17 amount, whether such individual is receiving or has received wages, the name
18 and address of the employer from whom the wages have been received, and the
19 amount of any wages received by the individual, the current or most recent
20 home address of the individual, whether the individual has refused an offer of
21 employment and, if so, a description of the employment so offered including,
22 but not limited to, the terms, conditions, and rate of pay therefor. The
23 requesting agency shall reimburse the Employment Security Department for costs
24 incurred in providing the requested information."

25

26 SECTION 20. Arkansas Code Annotated § 11-10-314(e)(3) and (4) are
27 hereby amended to read as follows:

28 "(3) Information requested by the Department of Human Services under
29 this subsection shall be released to the appropriate division of the
30 Department of Human Services on a basis in accordance with a plan to be
31 developed between the appropriate division of the Department of Human Services
32 and the Employment Security Department.

33 (4) In addition to the above, wage information contained in the records
34 of the Employment Security Department shall be made available to the extent
35 necessary for purposes of determining an individual's eligibility for aid or

1 services or the amount of the aid or services that an individual may be
2 entitled to under a state plan for aid and services to needy families with
3 children approved under Part A of Title IV of the Social Security Act to a
4 state or political subdivision thereof charged with the responsibility of
5 making the determinations when the information is specifically requested on an
6 individual by name and social security number by the state or political
7 subdivision for those purposes. The governmental agency or entity requesting
8 any information under this subsection shall reimburse the Employment Security
9 Department of the State of Arkansas for any and all costs incurred by the
10 agency in making the requested information available."

11

12 SECTION 21. Arkansas Code Annotated § 11-10-314(f), (g), (h), (i), (j),
13 and (k) are hereby amended to read as follows:

14 "(f)(1) All records, files, and documents of the Employment Security
15 Department pertaining to claims, benefit payments, assessments, contributions,
16 disqualifications for benefits, removals of disqualifications for benefits,
17 charges and credits to accounts, and classification of employers, wherever
18 located, which relate in any way to an employer or an employee of the
19 employer, shall be made available at all times for examination by an affected
20 employer, a claimant, or their duly authorized representative, but no record,
21 file, or document shall be removed from the custody of the Employment Security
22 Department. Any information made available under this provision to a claimant
23 shall be information pertaining only to that claimant. Any information made
24 available under this provision to an affected employer shall be information
25 pertaining only to that employer.

26 (2) No finding of fact or conclusion of law contained in a decision of
27 the Employment Security Department, an appeals referee, the board of review,
28 or a court, obtained under this law, shall have a preclusive effect in any
29 other action or proceeding except proceedings under this law.

30 (g) To the extent necessary for the proper verification of transactions
31 affecting his account as provided in §§ 11-10-701 - 11-10-715, upon receipt by
32 the director of a request from an affected employer for information concerning
33 benefits paid to a claimant who has been a base period employee of such
34 employer, the director shall, as promptly as possible, furnish information
35 regarding the periods of time for which benefits were paid and the amount of

1 benefits chargeable to the employer which have been paid to the claimant up to
2 the date of the employer request for each worker the employer properly
3 identifies in his request by social security account number and name. However,
4 information regarding benefits, charged more than one (1) year prior to the
5 last computation date, may not be given.

6 (h) Notwithstanding any other provisions of this law, information
7 obtained in the administration of this law and in the administration of and
8 concerning Job Training Partnership Act (JTPA) programs by the Employment
9 Security Department shall be disclosed to the extent permitted and in
10 accordance with the JTPA, Act of 1982, Public Law 97-300 as amended, and
11 implementing regulations promulgated thereunder by the United States
12 Department of Labor and shall be made available to persons and agencies for
13 purposes appropriate to the Employment Security Department's operation and
14 administration of the Job Training Partnership Act program.

15 (i) (1) Upon receipt of a subpoena of a Workers' Compensation Commission
16 Administrative Law Judge by the director, information from an individual's
17 claim record or from his application for work may be made available to the
18 Workers' Compensation Commission for use in making administrative
19 determinations under the Workers' Compensation Law, 11-9-101 et seq., in court
20 proceedings under that law, or in other actions reasonably necessary for the
21 proper administration of the Workers' Compensation Law. Photocopies of
22 Employment Security Department records containing the information shall be
23 received in evidence in any court or administrative proceeding had under the
24 Workers' Compensation Law, provided the copies have been sealed with the
25 official seal of the director of the Employment Security Department.

26 (2) The director shall not be obligated to make the information
27 available unless:

28 (A) The subpoena is delivered at least five (5) work days prior to the
29 date the information is required; and

30 (B) Payment of ten dollars (\$10.00) for the costs of producing the
31 information is paid or tendered at the time of service of the order or within
32 three (3) work days of service of the order.

33 (j) For use in furthering the economic development of the State of
34 Arkansas, the director may provide, to the extent that it is available, the
35 following information obtained in the administration of this chapter to the

1 state agencies specified:

2 (1) The Arkansas Industrial Development Commission may be provided:

3

4 (A) The employer name, mailing address, business location in Arkansas,
5 name of the owner, chief executive officer, or plant manager, current number
6 of employees, and standard industrial classification code for each employer
7 classified by the agency in standard industrial classification codes 20
8 through 39;

9 (B) The claims status of workers hired by employers under the Arkansas
10 Industrial Development Commission's Arkansas Enterprise Zone program
11 authorized by §§ 15-4-801 - 15-4-810 provided the commission submits a list of
12 workers by name and social security number;

13 (2) The Revenue Division of the Department of Finance and
14 Administration may be provided the net increase in employment at manufacturing
15 and mining establishments, as defined in 26-51-505, which are participating in
16 the Manufacturing Jobs Tax Credit program created by 26-51-505 if the division
17 provides a list of employers by name, location, and the period of time for
18 which the data is sought;

19 (3) The University of Arkansas at Little Rock, Center for Information
20 Services, may be provided covered wage and employment data by two-digit Office
21 of Management and Budget standard industrial classifications by county on a
22 quarterly basis.

23 (k)(1) The three (3) state entities specified in subsection (j) of this
24 section are strictly prohibited from making any disclosure or redisclosure of
25 the confidential information which may be made available to them under
26 provisions of subsection (j) of this section.

27 (2) Any publication of employer data by these entities shall be done in
28 strict accordance with the rules used by the agency and as prescribed by the
29 United States Department of Labor, Bureau of Labor Statistics, to prevent the
30 disclosure of individual employer information.

31 (3) The governmental agency or entity requesting any information under
32 subsection (j) of this section shall reimburse the Employment Security
33 Department of the state of Arkansas for any and all costs incurred by the
34 agency in making the requested information available."

35

1 SECTION 22. Arkansas Code Annotated § 11-10-321(c) is hereby amended to
2 read as follows:

3 "(c) All money in this fund, except money received pursuant to the
4 authorization in 903 of the Social Security Act, as amended, shall be expended
5 solely for the purpose and in the amounts found necessary by the United States
6 Secretary of Labor for the proper and efficient administration of the
7 employment security program."
8

9 SECTION 23. Arkansas Code Annotated § 11-10-322(a) is hereby amended to
10 read as follows:

11 "(a) If any money in the Employment Security Administration Fund, paid
12 to this state under Title III of the Social Security Act or the Wagner-Peyser
13 Act, as amended, is found by the United States Secretary of Labor, because of
14 any action or contingency, to have been lost or to have been expended for
15 purposes other than, or in amounts in excess of, those found necessary by the
16 United States Secretary of Labor for the proper administration of the
17 Employment Security program, it is the policy of this state that the money
18 shall be replaced by money appropriated for that purpose by the state to the
19 Employment Security Administration Fund for expenditure as provided in this
20 law."
21

22 SECTION 24. Arkansas Code Annotated § 11-10-403 is hereby amended to
23 read as follows:

24 "11-10-403. Election.

25 (a) An employing unit, not otherwise subject to this chapter, which
26 filed with the director its written election to become an employer subject
27 hereto for not less than two (2) calendar years shall, with the written
28 approval of the election by the director, become an employer subject hereto to
29 the same extent as all other employers, as of the date stated in the approval.
30 That employing unit shall cease to be subject hereto as of January 1 of any
31 calendar year subsequent to two (2) calendar years, only if during January of
32 each year, it has filed with the director a written notice to that effect.

33 (b)(1) An employing unit, for which services that do not constitute
34 employment, as defined in this chapter, are performed, may file with the
35 director a written election that all services performed by individuals in its

1 employ in one (1) or more distinct establishments or places of business shall
2 be deemed to constitute employment for all the purposes of this chapter for
3 not less than two (2) calendar years.

4 (2) Upon the written approval of the election by the director, such
5 services shall be deemed to constitute employment subject to this chapter from
6 and after the date stated in the approval.

7 (3) The services shall cease to be deemed employment subject hereto as
8 of January 1 of any calendar year subsequent to such two (2) calendar years,
9 only if during January of such year the employing unit has filed with the
10 director a written notice to that effect."

11

12 SECTION 25. Arkansas Code Annotated § 11-10-501 is hereby amended to
13 read as follows:

14 "11-10-501. Payment.

15 All benefits provided herein shall be payable from the Unemployment
16 Compensation Trust Fund. All benefits shall be paid through Employment
17 Security Department offices, in accordance with such regulations as the
18 director may prescribe."

19

20 SECTION 26. Arkansas Code Annotated § 11-10-506(a)(2) is hereby amended
21 to read as follows:

22 "(2) After a study of previous employment records, and after
23 investigation and hearing, the director shall determine the normal seasonal
24 period or periods during which workers are ordinarily employed for the purpose
25 of carrying on seasonal operations in each seasonal industry. Until the
26 determination by the director, no industry shall be deemed to be seasonal. The
27 director may initiate a study of an industry upon his own motion or upon a
28 request filed with the director by any employing unit or person that would be
29 affected by any determination made as a result of such a study. If a study is
30 made, it shall be mandatory for the director to make his determination and
31 report thereon within ninety (90) days after written application for the
32 determination has been filed. If the director initiates the study of an
33 industry upon his own motion and finds that the industry meets the seasonal
34 requirements set forth herein, he shall make his determination and report
35 within ninety (90) days after the study is initiated. In either event, the

1 industry shall be classified as a seasonal industry effective on the January 1
2 immediately following the date of the director's determination. Provided that,
3 any employer who is classified as a seasonal employer under these provisions
4 may make a written request to the Director asking not to be treated as a
5 seasonal employer. If the request is approved, treatment as a seasonal
6 employer will cease effective January 1 of the following calendar year."

7

8 SECTION 27. Arkansas Code Annotated § 11-10-507(2) and (3) are hereby
9 amended to read as follows:

10 "(2) Registration and Reporting. He has registered for work at, and
11 thereafter continued to report at, an Employment Security Department office in
12 accordance with such regulations as the director may prescribe. The director
13 may, by regulation, waive or alter either or both of the requirements of this
14 subdivision as to individuals attached to regular jobs and as to such other
15 types of cases or situations with respect to which he finds that compliance
16 with these requirements would be oppressive or would be inconsistent with the
17 purpose of this chapter. However, no such regulations shall conflict with
18 11-10-501;

19 (3) (A) Able to Work and Available for Work. The worker is unemployed,
20 is physically and mentally able to perform suitable work, and is available for
21 such work. Mere registration and reporting at a local employment office shall
22 not be conclusive evidence of ability to work, availability for work, or
23 willingness to accept work unless the individual is doing those things which a
24 reasonably prudent individual would be expected to do to secure work.

25 (B) Persons who are on layoff and who are attending a state vocational
26 school for the purpose of upgrading or improving their job skills shall be
27 considered available for employment so long as they make reasonable efforts to
28 secure employment unless, or until, they refuse suitable employment or
29 referral or recall to suitable work. However, no otherwise eligible individual
30 shall be denied benefits with respect to any week in which he is in training
31 with the approval of the director by reason of the application of the
32 provisions of subdivision (3) (A) of this section relating to availability for
33 work.

34 (C) For the purpose of subdivision (3), the approval by the director of
35 training for an individual shall be based on the following considerations:

1

2 (i) The claimant's skills must be obsolete, or the demands for his
3 skills in his labor market must be minimal and not likely to improve;

4 (ii) The claimant must possess aptitudes or skills which can be
5 usefully supplemented within a short time by retraining;

6 (iii) The training must be for an occupation for which there is a
7 substantial and recurring demand; and

8 (iv) The claimant must produce evidence of continued attendance and
9 satisfactory progress.

10 (D) In the event of the death of an individual's immediate family
11 member, the eligibility requirements of availability for that individual shall
12 be waived for the day of the death and for six (6) consecutive calendar days
13 thereafter. For the purposes of subdivision (3) of this section, 'immediate
14 family member' means a spouse, child, parent, brother, sister, grandchild, or
15 grandparent of the individual.

16 (E) An individual on short-term layoff who expects to be recalled by
17 his employer to a full-time job and whose employer intends to recall the
18 individual to a full-time job within eight (8) weeks after the initial date of
19 his layoff shall not be required during the layoff to register for work at an
20 Employment Security Department office or to seek other work.

21 (F) Any individual who is not actively engaged in seeking work because
22 he is before any court of the United States or of any state pursuant to a
23 lawfully issued summons to appear for jury duty shall not be disqualified
24 under subdivision (3) of this section.

25 (G) No individual shall be considered unavailable for work under this
26 subdivision during the entire week if he is required to withdraw from the
27 labor market for less than four (4) days of the week because of a compelling
28 personal emergency."

29

30 SECTION 28. Arkansas Code Annotated § 11-10-515(a) and (b) are hereby
31 amended to read as follows:

32 "(a) (1) If so found by the director, an individual shall be
33 disqualified for benefits if he has failed without good cause:

34 (A) To apply for available suitable work when so directed by an
35 Employment Security Department office; or

1 (B) To accept available suitable work when offered.

2 (2) The disqualification shall be for eight (8) weeks of unemployment
3 as defined in 11-10-512 and shall begin with the week in which the failure to
4 apply for or accept available suitable work occurred.

5 (b)(1) No individual shall be disqualified from the receipt of benefits
6 with respect to any week in which he is in training with the approval of the
7 director by reason of the application of provisions in subsection (a) of this
8 section.

9 (2) For the purpose of this subsection the approval of the director
10 shall be based on the following considerations:

11 (A) The claimant's skills must be either obsolete or the demands for
12 his skills in his labor market must be such as to make employment
13 opportunities for him in that labor market minimal and not likely to improve;
14 and

15 (B) The claimant must possess aptitudes or skills which can be usefully
16 supplemented within a short time by retraining; and

17 (C) The training must be for an occupation for which there is a
18 substantial and recurring demand; and

19 (D) The claimant must produce evidence of continued attendance and
20 satisfactory progress."

21

22 SECTION 29. Arkansas Code Annotated §11-10-522(b) is hereby amended to
23 read as follows:

24 "(b) COMBINATION OF CLAIM. Whenever any claim involves the same issue
25 for more than one (1) claimant, the cases will be combined for the purpose of
26 a hearing if a request to do so is received. If the request is made by any
27 interested party, the director shall refer those cases to a hearing examiner
28 designated by the Board of Review."

29

30 SECTION 30. Arkansas Code Annotated § 11-10-523(f) is hereby amended to
31 read as follows:

32 "(f) The chairman of the Board of Review, the members, and the examiner
33 and reporter, as provided for above, shall all receive their actual and
34 necessary expenses incurred, in accordance with the regulations of the
35 Employment Security Department of the State of Arkansas."

1

2 SECTION 31. Arkansas Code Annotated § 11-10-523(g) (2) (C) is hereby
3 amended to read as follows:

4 "(C) The Director shall provide the Board of Review and appeal
5 tribunals with proper facilities and assistance for the execution of their
6 functions."

7

8 SECTION 32. Arkansas Code Annotated § 11-10-524(a) and (b) are hereby
9 amended to read as follows:

10 "(a) The claimant, the Director, or any other party entitled to notice
11 may appeal a determination made by the agency by filing a written notice of
12 appeal with the appeal tribunal or at any office of the Employment Security
13 Department within twenty (20) days after the date of mailing of the notice to
14 his last known address, or if the notice is not mailed, within twenty (20)
15 days after the date of delivery of the notice. If mailed, an appeal shall be
16 considered to have been filed as of the date of the postmark on the envelope.
17 However, if it is determined by an appeals tribunal or the Board of Review
18 that the appeal is not perfected within the twenty-day period as a result of
19 circumstances beyond the appellant's control, the appeal may be considered as
20 having been filed timely.

21 (b) Unless the appeal is withdrawn with its permission or is removed to
22 the Board of Review, the appeal tribunal, after affording the parties a
23 reasonable opportunity for a fair hearing and on the basis of the record shall
24 affirm, modify, reverse, or remand the determination. However, whenever an
25 appeal involves a question as to whether services were performed by a claimant
26 in employment or for an employing unit, the appeal tribunal shall give special
27 notice of the issue and of the pendency of the appeal to the employing unit
28 and to the Director, both of whom shall be parties to the proceedings and be
29 afforded a reasonable opportunity to present evidence bearing on the question
30 in issue."

31

32 SECTION 33. Arkansas Code Annotated § 11-10-533(a) is hereby amended to
33 read as follows:

34 "(a) The Employment Security Department shall investigate all claims
35 for benefits filed by state employees whether or not the employing state

1 agency lodges a protest to the payment of the benefits."

2

3 SECTION 34. Arkansas Code Annotated § 11-10-601(2) is hereby amended to
4 read as follows:

5 "(2) 'Approved plan' means an employer's voluntary written plan for
6 reducing unemployment under which a specified group of employees shares the
7 work remaining after their normal weekly hours of work are reduced, which plan
8 meets the requirements of 11-10-604, and which plan has been approved in
9 writing by the director;"

10

11 SECTION 35. Arkansas Code Annotated § 11-10-604(a) is hereby amended to
12 read as follows:

13 "(a) An employer wishing to participate in a shared work program shall
14 submit a signed written shared work compensation plan to the director for
15 approval."

16

17 SECTION 36. Arkansas Code Annotated § 11-10-604(b) is hereby amended to
18 read as follows:

19 "(b) The director shall approve a shared work unemployment compensation
20 plan only if the following criteria are met:

21 (1) The plan applies to and identifies the specified affected group;

22 (2) The employees in the affected group or groups are identified by
23 name, social security number, and by any other information required by the
24 director;

25 (3) The usual weekly hours of work for employees in the affected group
26 or groups are reduced by not less than ten percent (10%) and not more than
27 forty percent (40%);

28 (4) Health benefits and retirement benefits under defined benefit
29 pension plans, as defined in Section 3(35) of the Employee Retirement Income
30 Security Act of 1974, and other fringe benefits will continue to be provided
31 to employees in the affected group or groups as though their work weeks had
32 not been reduced;

33 (5) The plan certifies that the aggregate reduction in work hours is in
34 lieu of temporary layoffs which would have affected at least ten percent (10%)
35 of the employees in the affected group or groups to which the plan applies and

1 which would have resulted in an equivalent reduction in work hours;

2 (6) During the previous four (4) months the work force in the affected
3 group has not been reduced by temporary layoffs of more than ten percent (10%)
4 of the workers;

5 (7) The plan applies to at least ten percent (10%) of the employees in
6 the affected group. If the plan applies to all employees in the affected
7 group, the plan provides equal treatment to all employees of the group. If
8 the affected group is divided into subgroups, the plan provides equal
9 treatment to employees within each subgroup;

10 (8) In the case of employees represented by an exclusive bargaining
11 representative, the plan is approved in writing by the collective bargaining
12 agent. In the event that the certification of an exclusive bargaining
13 representative has been appealed, such bargaining representative shall be
14 considered to be the exclusive bargaining representative for work sharing plan
15 purposes. In the absence of any bargaining representative, the plan must
16 contain a certification by the employer that he has made the proposed plan, or
17 a summary thereof, available to each employee in the affected group for
18 inspection;

19 (9) The plan includes a certified statement by the employer that each
20 employee in the affected group would be eligible for normal unemployment
21 compensation under 11-10-507(5). Any employee who joins an affected group
22 after the approval of the shared work plan is automatically covered under the
23 previously approved plan, effective the week that the director receives
24 written notice from the shared work employer that the employee has joined and
25 certification that the employee meets the requirements of 11-10-507(5);

26 (10) On the most recent computation date preceding the date of
27 submittal of the shared work plan for approval, the total of all contributions
28 paid on the employing unit's own behalf and credited to his account for all
29 previous periods equaled or exceeded the regular benefits charged to his
30 account for all previous periods;

31 (11) The plan will not serve as a subsidy of seasonal employment during
32 the off season, nor as a subsidy of temporary part-time or intermittent
33 employment;

34 (12) The employer agrees to furnish reports relating to the proper
35 conduct of the plan and agrees to allow the director or his authorized

1 representatives access to all records necessary to verify the plan prior to
2 approval and, after approval, to monitor and evaluate application of the
3 plan."

4
5 SECTION 37. Arkansas Code Annotated § 11-10-605(a) is hereby amended to
6 read as follows:

7 "(a) The director shall approve or reject a plan in writing within
8 thirty (30) days of its receipt."

9
10 SECTION 38. Arkansas Code Annotated § 11-10-606 is hereby amended to
11 read as follows:

12 "11-10-606. Effective date and duration of plan.

13 (a) A plan shall be effective on the date specified in the plan or on a
14 date mutually agreed upon by the employer and the director but no earlier than
15 the date of approval of the plan by the director.

16 (b)(1) It shall expire at the end of the twelfth full calendar month
17 after its effective date or on the date specified in the plan if the date is
18 earlier, provided that the plan is not previously revoked by the director.

19 (2) If a plan is revoked by the director, it shall terminate on the
20 date specified in the director's written order of revocation."

21
22 SECTION 39. Arkansas Code Annotated § 11-10-607 is hereby amended to
23 read as follows:

24 "11-10-607. Revocation of approval.

25 (a) The director may revoke approval of a plan for good cause.

26 (1) The revocation order shall be in writing and shall specify the date
27 the revocation is effective and the reasons therefor.

28 (2) Good cause shall include, but not be limited to, failure to comply
29 with the assurances given in the plan, unreasonable revision of productivity
30 standards for the affected group, conduct or occurrences tending to defeat the
31 intent and effective operation of the plan, and violation of any criteria on
32 which approval of the plan was based.

33 (b) The action may be taken at any time by the director on his own
34 motion, on the motion of any of the affected group's employees, or on the
35 motion of the appropriate collective bargaining agent.

1 (c) However, the director shall review the operation of each qualified
2 employer plan at least once during the twelve-month period the plan is in
3 effect to assure its compliance with the requirements of these provisions.

4 (d) Revocation of a plan for good cause by the director shall preclude
5 approval of any subsequent plan submitted by the revoked plan employer during
6 the twelve-month period beginning on the date of the revocation order."

7

8 SECTION 40. Arkansas Code Annotated § 11-10-608 is hereby amended to
9 read as follows:

10 "11-10-608. Modification of an approved plan.

11 (a) An operational, approved, shared work plan may be modified by the
12 employer with the acquiescence of employee representatives if the modification
13 is not substantial and is in conformity with the plan approved by the
14 director, but the modifications must be reported promptly to the director.

15 (b)(1) If the hours of work are increased or decreased substantially
16 beyond the level in the original plan, or any other conditions are changed
17 substantially, the director shall approve or disapprove the modifications,
18 without changing the expiration date of the original plan.

19 (2) If the substantial modifications do not meet the requirements for
20 approval, the director shall disallow that portion of the plan in writing as
21 specified in 11-10-607."

22

23 SECTION 41. Arkansas Code Annotated § 11-10-610(d) is hereby amended to
24 read as follows:

25 "(d) Claims for shared work unemployment compensation benefits shall be
26 filed in the same manner as claims for unemployment compensation or as
27 prescribed in regulations by the director."

28

29 SECTION 42. Arkansas Code Annotated § 11-10-708(b) is hereby amended to
30 read as follows:

31 "(b) Receipts from this advance interest tax and any penalty and
32 interest collected on overdue advance interest taxes shall be deposited into
33 the unemployment compensation fund clearing account. At least once each month
34 deposits which have been established as advance interest tax payments and any
35 interest and penalty payments applicable to such advance interest payments

1 shall be paid over to the State Treasurer and credited by the State Treasurer
2 to the Employment Security Advance Interest Trust Fund created and established
3 in the State Treasury. All income from investment of the Employment Security
4 Advance Interest Trust Fund shall be deposited and credited to that Advance
5 Interest Trust Fund. All withdrawals shall be upon voucher warrants issued,
6 or caused to be issued, by the director as authorized by legislative
7 appropriation and, except as otherwise provided herein, shall be used only for
8 the purpose of:

9 (1) Paying interest incurred by the state on advances obtained from the
10 Federal Unemployment Trust Fund, under Title XII of the Social Security Act,
11 as amended;

12 (2) Making refunds of the aforementioned advance interest tax and
13 interest and penalty payments attributed to the advance interest tax which
14 were erroneously paid; and

15 (3) Returning monies to the unemployment compensation fund clearing
16 account which may have been incorrectly identified and erroneously transferred
17 to the Employment Security Advance Interest Fund in the State Treasury."
18

19 SECTION 43. Arkansas Code Annotated § 11-10-710(b) is hereby amended to
20 read as follows:

21 "(b) (1) However, notwithstanding any other provision of this law, if
22 any individual, legal entity, or other employing unit acquires a segregable
23 and identifiable portion of the business of any employer, whether the
24 acquisition is the result of reorganization, purchase, inheritance,
25 receivership, or for any other cause, and if the successor desires to obtain
26 any benefit of his predecessor's experience, the successor must file with the
27 director a petition, signed by all interested parties, within thirty (30) days
28 after the transfer setting out the percentage of the predecessor's experience
29 that should be transferred to the successor's account of the actual
30 contributions, regular benefit experience, annual payrolls, payment of
31 contributions, and otherwise as if no change with respect to the segregable
32 and identifiable portion of the separate account had occurred with the same
33 effect and the purposes as if the operation of the employer had at all times
34 been carried on by the predecessor employing unit, and it is found by the
35 director that all contributions due by the predecessor employing unit have

1 been paid.

2 (2) If the director finds the facts substantially as represented, he
3 shall transfer from the predecessor to the successor the proportionate share
4 of the predecessor's experience."
5

6 SECTION 44. Arkansas Code Annotated § 11-10-713(e)(1)(C) is hereby
7 amended to read as follows:

8 "(C) The Employment Security Department shall bill and the Chief Fiscal
9 Officer of the State shall promptly reimburse the Employment Security
10 Department for such benefit payments in accordance with the provisions of
11 subsection (d) of this section;"
12

13 SECTION 45. Arkansas Code Annotated § 11-10-716(b)(1) is hereby amended
14 to read as follows:

15 "(b)(1) Not later than July 31, 1965, and the end of each month
16 thereafter deposits in the clearing account which have been established as
17 interest and penalty payments collected pursuant to §§ 11-10-716 - 11-10-722
18 shall be paid over to the State Treasurer and credited by him to the
19 Employment Security Special Fund created and established in the State
20 Treasury. All withdrawals therefrom shall be upon voucher warrants issued, or
21 caused to be issued, by the director for any one or more of the following
22 purposes as authorized by legislative appropriation:

23 (A) Refunds of the aforementioned interest and penalties erroneously
24 paid;

25 (B) Replacements of money lost or erroneously expended, as provided by
26 11-10-322; and

27 (C) Such other and additional purposes necessary to the proper
28 administration of this law as determined by the director."
29

30 SECTION 46. Arkansas Code Annotated § 11-10-717(a)(1) is hereby amended
31 to read as follows:

32 "(a)(1) If, after due notice, any employer defaults in any payment of
33 contributions or interest thereon, the amount due may be collected by civil
34 action in the name of the Director of the Employment Security Department. The
35 employer adjudged in default shall pay the costs of the action, including

1 reasonable attorney's fee for prosecution of the action."

2

3 SECTION 47. Arkansas Code Annotated § 11-10-717(c) (1) is hereby amended
4 to read as follows:

5 "(c) (1) The courts of this state shall recognize and enforce liability
6 for unemployment contributions, penalties, interest, benefit overpayments,
7 court costs, and reasonable attorney's fees imposed by other states which
8 extend a like comity to this state. The director is empowered to effect
9 collection of unemployment contributions, penalties, interest, benefit
10 overpayments, court costs, and reasonable attorney's fees due the Employment
11 Security Department of this state in any jurisdiction which extends such
12 comity. In no instance shall this state or any other state exceed the
13 collection procedures as provided by the laws of the state in which
14 collections are effected."

15

16 SECTION 48. Arkansas Code Annotated § 11-10-718(b) (1) is hereby amended
17 to read as follows:

18 "(b) (1) If any person liable for the payment of any tax or
19 contributions due under this chapter neglects or refuses to pay the tax or
20 contribution after a demand, the amount, including any interest, penalty,
21 additional amount, or additions to such tax, together with any costs that may
22 accrue in addition thereto, shall be a lien in favor of the State of Arkansas
23 upon all property and rights to property, whether real or personal, belonging
24 to the person. The proceedings for enforcing the lien herein provided for
25 shall be brought in the name of the Director of the Employment Security
26 Department of the State of Arkansas. All liens issued under this chapter by
27 the Director of Labor shall remain in full force and effect and shall be fully
28 enforceable by the Director of the Employment Security Department."

29

30 SECTION 49. Arkansas Code Annotated § 11-10-718(c) is hereby amended to
31 read as follows:

32 "(c) (1) Upon written application by any person, the director or his
33 designee may release from a lien any property or part of the property subject
34 to the lien described in subdivision (b) (1) provided that:

35 (A) The director or his designee determines at any time that the

1 interest of the Arkansas Employment Security Department has no value; or

2 (B) The director or his designee determines that the lien is clouding
3 the title of the property because of an error in the description of properties
4 or similarity in names.

5 (2) In determining the value of the interest of the Arkansas Employment
6 Security Department in the property to be released, the director or his
7 designee shall give consideration to the value of the property and to the
8 liens thereon having priority over the lien of the Arkansas Employment
9 Security Department."

10

11 SECTION 50. Arkansas Code Annotated § 11-10-720(a) is hereby amended to
12 read as follows:

13 "(a) (1) If any person, firm, or corporation shall become delinquent in
14 the payment of any contribution, interest, or penalties required to be paid by
15 this law, it shall be the duty of the director, when the amount of the
16 contribution, interest, and penalties is determined, either by the report of
17 the employer or by such investigations as the director may have made, to
18 assess the contributions, interest, and penalties so determined against the
19 delinquent employer, and to certify the amount of the contributions, interest,
20 and penalties, and mail or otherwise deliver a copy of the assessment to the
21 delinquent employer.

22 (2) At the end of ten (10) days thereafter, the assessment shall become
23 prima facie correct, and the director shall certify the amount of the
24 delinquent contributions, interest, and penalties to the clerk of the circuit
25 court of the county wherein the employer is domiciled or has a place of
26 business, and it shall be the duty of the clerk to file the certificate of
27 record and to enter it in the record of the circuit court for judgment and
28 decree under the procedure prescribed for filing transcripts of judgments by §
29 16-19-1011. Thereupon the assessment shall have the force and effect of a
30 judgment of the circuit court and shall bear interest at the rate of ten
31 percent (10%) a year.

32 (3) Execution shall be issuable, at the request of the director, his
33 agent or attorney, or any other employee of the Employment Security Department
34 of the State of Arkansas, forthwith by the clerk of the circuit court,
35 directed to the sheriff, who shall make a levy on any property, assets, or

1 effects of the employer against whom the contribution is assessed."

2

3 SECTION 51. Arkansas Code Annotated § 11-10-720(d) is hereby amended to
4 read as follows:

5 "(d) An aggrieved employer may have a review of the action of the
6 director in making an assessment for contributions, interest, or penalties, by
7 filing, within ten (10) days after the filing of the assessment with the
8 clerk, a petition for such review in the chancery court having jurisdiction.
9 All actions for review shall have precedence on the docket of the court where
10 filed and all appeals from the action of any court on the review shall be
11 prosecuted within thirty (30) days after the final order of the court is
12 made."

13

14 SECTION 52. Arkansas Code Annotated § 11-10-722(b) is hereby amended to
15 read as follows:

16 "(b) Any bank or savings and loan institution served with notice of
17 impoundment shall be required to recognize the Arkansas Employment Security
18 Department's lien on any deposit subject thereto by withholding payment of any
19 deposit in an amount not to exceed the amount of the delinquent contributions,
20 interest, and penalty, to the depositor or to his order for a period not to
21 exceed thirty (30) days."

22

23 SECTION 53. Arkansas Code Annotated § 11-10-802(a) is hereby amended to
24 read as follows:

25 "(a) The director shall be ex officio treasurer and custodian of the
26 fund and disbursing officer of the Employment Security Department. The
27 director shall administer the fund and shall maintain within the fund three
28 (3) separate accounts:

- 29 (1) A clearing account;
- 30 (2) An Unemployment Compensation Trust Fund Account; and
- 31 (3) A benefit account."

32

33 SECTION 54. Arkansas Code Annotated § 11-10-802(c) is hereby amended to
34 read as follows:

35 "(c) The director shall furnish bond to the state with a corporate

1 surety thereon, conditioned that he will faithfully perform his duties of
2 employment and will properly account for all funds received and disbursed by
3 him. The bond shall be executed in the amount prescribed and in accordance
4 with the applicable provisions of Arkansas law which prescribe surety bonds
5 for state officers and employees and for officers and employees of state
6 boards and commissions."

7

8 SECTION 55. All provisions of this act of a general and permanent
9 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
10 Code Revision Commission shall incorporate the same in the Code.

11

12 SECTION 56. If any provision of this act or the application thereof to
13 any person or circumstance is held invalid, such invalidity shall not affect
14 other provisions or applications of the act which can be given effect without
15 the invalid provision or application, and to this end the provisions of this
16 act are declared to be severable.

17

18 SECTION 57. All laws and parts of laws in conflict with this act are
19 hereby repealed.

20

21 SECTION 58. EMERGENCY. It is hereby found and determined by the
22 General Assembly that the provisions of this act should become effective at
23 the beginning of the next fiscal year; that the next fiscal year begins on
24 July 1, 1991 and this act may not go into effect until after July 1, 1991
25 unless an emergency is declared. Therefore, an emergency is hereby declared
26 to exist and this act being necessary for the preservation of the public
27 peace, health and safety shall be in full force and effect from and after July
28 1, 1991.

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