

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 84th General Assembly  
3 Regular Session, 2003  
4

*As Engrossed: H1/29/03*

# A Bill

HOUSE BILL 1189

5 By: Representative Mahony  
6 By: Senator Broadway  
7

## For An Act To Be Entitled

10 AN ACT TO AMEND ARKANSAS CODE § 11-10-902 TO  
11 INCLUDE INDEPENDENT CONTRACTORS IN THE STATE NEW  
12 HIRE REGISTRY; AND FOR OTHER PURPOSES.  
13

### Subtitle

14 AN ACT TO AMEND ARKANSAS CODE § 11-10-  
15 902 TO INCLUDE INDEPENDENT CONTRACTORS  
16 IN THE STATE NEW HIRE REGISTRY.  
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20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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22 SECTION 1. Arkansas Code § 11-10-902 is amended to read as follows:

23 11-10-902. Reporting requirements - Enforcement of child support  
24 obligations - Confidentiality.

25 (a) As used in this section:

26 (1) "Employee" means an individual who is an employee as defined  
27 in Chapter 24 of the Internal Revenue Code of 1986 but does not include an  
28 employee of a federal or state agency performing intelligence or  
29 counterintelligence operations if the head of the agency has determined that  
30 reporting pursuant to subsection (b) of this section could endanger the  
31 safety of the employee or could compromise an ongoing operation or  
32 investigation;

33 (2) "Employer" means an employer as that term is defined in §  
34 3401(d) of the Internal Revenue Code of 1986 and includes any labor  
35 organization and any governmental entity; ~~and~~

36 (3) "Independent contractor" means an individual who performs



1 labor for an employer or other payor of income in exchange for compensation  
2 or income which is not subject to withholding, and for whom the employer or  
3 payor of income is required or for whom it is reasonably anticipated that it  
4 will be required by the Internal Revenue Service to complete a 1099-MISC  
5 form;

6 ~~(3)~~ (4) "Labor organization" means a labor organization as that  
7 term is defined in § 2(5) of the National Labor Relations Act and includes  
8 any entity, sometimes known as a "hiring hall", that is used by the labor  
9 organization and an employer to carry out the requirements listed in §  
10 8(f)(3) of the federal act of an agreement between the organization and the  
11 employer; and

12 (5) "Payor of income" means a person engaged in a trade or  
13 business who engages the services or labor of an independent contractor in  
14 exchange for compensation or income.

15 (b)(1) On and after October 1, 1997, the Division of the State New  
16 Hire Registry shall compile an automated state registry of newly hired  
17 employees, and returning employees, and independent contractors.

18 (2) An employer or payor of income shall report electronically  
19 or in any manner authorized by the Arkansas Employment Security Department  
20 for inclusion in the state registry whenever an employee is newly hired or  
21 returns to work, or when the services or labor of an independent contractor  
22 are engaged.

23 (3) An employer or payor of income shall include in each report  
24 the name, address, and social security number of the employee or independent  
25 contractor, and the name, address, and federal taxpayer identification number  
26 of the employer or payor of income.

27 (4) An employer or payor of income shall make the report by  
28 submitting a copy of Internal Revenue Service Form W-4 or a W-9 form for the  
29 employee or independent contractor or, at the option of the employer or payor  
30 of income, an equivalent form. An employer or payor of income may transmit  
31 the report by first class mail, magnetically, or electronically. If an  
32 employer or payor of income makes the report by mail, the reporting date is  
33 that of the postmark. The report shall be received not later than twenty  
34 (20) days after the date the employer or payor of income hires the employee  
35 or when the services or labor of an independent contractor are engaged or, in  
36 the case of an employer or payor of income transmitting reports magnetically

1 or electronically, by two (2) monthly transmissions, if necessary, not less  
2 than twelve (12) days nor more than sixteen (16) days apart.

3 (5) An employer that has employees employed in two (2) or more  
4 states and transmits reports magnetically or electronically may comply with  
5 the reporting requirements of this section by designating one (1) state in  
6 which the employer has employees and to which the employer will transmit the  
7 report required by this section. Any employer that transmits reports shall  
8 notify the Secretary of the Department of Health and Human Services in  
9 writing as to which state the employer *designates for the purpose of sending*  
10 *reports.*

11 (6) A payor of income who has engaged an independent contractor  
12 must report the information required in section (b)(3) and (b)(4) of this  
13 section to the Arkansas Employment Security Department or its designated  
14 contractor.

15 (c)(1) Information reported pursuant to this section shall be entered  
16 into the registry data base maintained by the Arkansas Employment Security  
17 Department or its designated contractor within five (5) business days of  
18 receipt from an employer or payor of income. As used herein, "business day"  
19 means a day on which state offices are open for regular business.

20 (2) Within two (2) business days after the data information  
21 regarding a newly hired employee or newly engaged independent contractor is  
22 entered into the registry, the Office of Child Support Enforcement of the  
23 Revenue Division of the Department of Finance and Administration shall  
24 transmit a notice to the employer or payor of income directing the employer  
25 or payor of income to withhold from the compensation or income of the  
26 employee or independent contractor an amount equal to the monthly or other  
27 periodic child support obligation, including any past due child support  
28 obligation, of the employee or independent contractor.

29 (3) Within three (3) business days after the date information  
30 regarding a newly hired employee is entered into the registry, the Arkansas  
31 Employment Security Department or its designated contractor shall furnish the  
32 information to the National Registry of New Hires.

33 (4) On a quarterly basis, the state registry shall furnish to  
34 the national registry extracts of reporting required to be made to the  
35 Secretary of Labor concerning the wages and unemployment compensation paid to  
36 individuals by such dates, in such format, and containing such information as

1 the Secretary of the Department of Health and Human Services shall specify in  
2 regulations.

3 (5)(A) The Department of Human Services shall have access to  
4 information reported by employers or payors of income pursuant to this  
5 section for the purpose of verifying eligibility for programs pursuant to 42  
6 U.S.C. § 1320B-7.

7 (B) The Arkansas Employment Security Department shall have  
8 access to information reported by employers or payors of income pursuant to  
9 this section for purposes of administering the Arkansas Employment Security  
10 Department's programs.

11 (C) The Workers' Compensation Commission shall have access  
12 to information reported by employers or payors of income pursuant to this  
13 section for purposes of administering the workers' compensation programs.

14 (d)(1) Not later than May 1, 1998, the Arkansas Employment Security  
15 Department shall directly or by contract conduct automated comparisons of the  
16 social security numbers reported by employers and payors of income, and the  
17 social security numbers appearing within records of the Office of Child  
18 Support Enforcement for cases being enforced under the Title IV-D State Plan.

19 (2) When an information comparison reveals a match with respect  
20 to the social security number of an individual required to provide child  
21 support under a support order, the registry shall immediately provide the  
22 Office of Child Support Enforcement with the name, address, and social  
23 security number of the employee or independent contractor to whom the social  
24 security number is assigned and the name, address, and federal employer  
25 identification number of the employer or payor of income.

26 (e) The Office of Child Support Enforcement shall use information  
27 received pursuant to subsection (d) of this section to locate individuals for  
28 purposes of establishing paternity and establishing, modifying, and enforcing  
29 child support obligations and may disclose that information to its agents  
30 under contract for purposes connected to the administration of the Title IV-D  
31 Child Support Program.

32 (f) All information gathered and maintained by the registry shall be  
33 held confidential and be utilized solely for the purposes authorized in this  
34 section. The information shall be considered an exception to the open public  
35 record requirements of the Freedom of Information Act of 1967, § 25-19-101 et  
36 seq.

1 (g) To the maximum extent allowable, all expenses associated with the  
2 development and operation of the registry shall be reimbursed through  
3 available funding under the Title IV-D Child Support Program.  
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9 /s/ Mahony  
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