

*As Engrossed: 3/1/95*

1 **State of Arkansas**  
2 **80th General Assembly**  
3 **Regular Session, 1995**  
4 **By: Senators Cassady and Walker**

# A Bill

**ACT 519 OF 1995**  
**SENATE BILL 191**

## For An Act To Be Entitled

9 "AN ACT TO AMEND VARIOUS PROVISIONS OF ARKANSAS CODE TITLE  
10 II, CHAPTER 10, CITED AS THE ARKANSAS EMPLOYMENT SECURITY  
11 LAW; AND FOR OTHER PURPOSES."

### Subtitle

14 "AMEND VARIOUS PROVISIONS OF ARKANSAS  
15 CODE TITLE II, CHAPTER 10, CITED AS THE  
16 ARKANSAS EMPLOYMENT SECURITY LAW."

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

20 SECTION 1. Arkansas Code Annotated 11-10-215(a) is amended to read as  
21 follows:

22 "(a) As used in this chapter, unless the context clearly requires  
23 otherwise, wages means all remuneration paid for personal services  
24 including, but not limited to, commissions and bonuses and cash value of all  
25 remuneration paid, in any medium other than cash, the value of which shall be  
26 estimated and determined in accordance with regulations prescribed by the  
27 director, tips received while performing services which constitute employment  
28 and which are included in a written statement furnished to the employer  
29 pursuant to 26 U.S.C. § 6053(a), provided that the term wages shall not  
30 include:

31 (1) (A) For the purposes of §§ 11-10-701 - 11-10-715:

32 (i) That part of remuneration paid to an individual  
33 by an employer with respect to employment during any calendar year prior to or  
34 ending December 31, 1992, which exceeds eight thousand dollars (\$8,000);

35 (ii) For the calendar year beginning on and after  
36 January 1, 1993, that part of remuneration that exceeds eight thousand five

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1 hundred dollars (\$8,500); and

2 (iii) For any calendar year beginning on and after  
3 January 1, 1994, that part of remuneration that exceeds nine thousand dollars  
4 (\$9,000).

5 (B) For the purposes of this subsection:

6 (i) Wages paid within a calendar year by a  
7 predecessor employer may be counted as though paid by a successor as defined  
8 in §§ 11-10-701 - 11-10-715; and

9 (ii) The term employment includes services  
10 constituting employment under any unemployment insurance law of another state;

11 (2) The amount of any payment with respect to services made to,  
12 or on behalf of, an individual in its employ under a plan or system  
13 established by an employing unit which makes provision for its employees or  
14 for its employees and their dependents, including any amount paid by an  
15 employing unit for insurance or annuities, or into a fund, to provide for any  
16 payment, on account of:

17 (A) Retirement;

18 (B) (i) Sickness or accident disability, except payments  
19 made directly to the employee or his dependents;

20 (ii) However, payments made directly to an employee  
21 or his dependents under a workers' compensation law shall not be considered to  
22 be wages;

23 (C) Medical and hospitalization expenses in connection with  
24 sickness or accident disability; or

25 (D) Death, provided the individual in its employ does not  
26 have the:

27 (i) Option to receive, instead of provision for the  
28 death benefit, any part of the payment, or if the death benefit is insured,  
29 any part of the premiums or contributions to premiums paid by his employing  
30 unit; and

31 (ii) Right, under the provisions of the plan or  
32 system or policy of insurance providing for the death benefit, to assign the  
33 benefit, or to receive cash consideration in lieu of the benefit either upon  
34 his withdrawal from the plan or system providing for the benefit or upon  
35 termination of the plan or system or policy of insurance or of his services

1 with the employing unit;

2           (3) The payment by an employing unit, without deduction from the  
3 remuneration of the individual in its employ, of the tax imposed by the  
4 Federal Insurance Contributions Act upon an individual in its employ with  
5 respect to services performed;

6           (4) Payments made by an employer under a cafeteria plan, within  
7 the meaning of 26 U.S.C. § 125, if such payment would not be treated as wages  
8 without regard to such plan and it is reasonable to believe that, if 26 U.S.C.  
9 § 125 applied for purposes of this section, 26 U.S.C. § 125 would not treat  
10 any wages as constructively received; or

11           (5) Fees paid to corporate directors."  
12

13           SECTION 2. Arkansas Code Annotated 11-10-306(b) is amended to read as  
14 follows:

15           "(b)(1) He shall have power and authority to adopt, amend, or rescind  
16 such rules and regulations, employ such persons, make such expenditures,  
17 require such reports, make such investigations, and take such other action as  
18 he deems necessary or suitable to that end.

19           (2) Beginning on and after January 1, 1995, he shall have power  
20 and authority to equitably resolve issues involving employers or claimants if  
21 the issues are found to be the result of, or due to, agency error."  
22

23           SECTION 3. Arkansas Code Annotated 11-10-314(e) is amended to read as  
24 follows:

25           "(e)(1) Upon request of a public agency administering or supervising  
26 the administration of a state plan of Aid to Families with Dependent Children  
27 approved under Part A of Title IV of the Social Security Act, the  
28 administration of a state plan of medical assistance approved under Title XIX  
29 of the Social Security Act, the administration of a state plan of Food Stamps  
30 approved under the Federal Food Stamp Act, Public Law 95-113, or a public  
31 agency charged with any duty or responsibility authorized or required under  
32 the Child Support and Establishment of Paternity Program provisions of Part D  
33 of Title IV of the Social Security Act, or by officers or employees of the  
34 U.S. Department of Agriculture, the director shall furnish to the public  
35 agency information contained in the files of the Arkansas Employment Security

1 Department with respect to any individual specified in the request as to  
2 whether the individual is receiving, has received, or has made application for  
3 unemployment compensation, the date the individual was determined eligible or  
4 ineligible, the date the individual's claim was exhausted, the weekly benefit  
5 amount actually paid and the date paid, the individual's weekly benefit  
6 amount, whether such individual is receiving or has received wages, the name  
7 and address of the employer from whom the wages have been received, and the  
8 amount of any wages received by the individual, the current or most recent  
9 home address of the individual, whether the individual has refused an offer of  
10 employment and, if so, a description of the employment so offered including,  
11 but not limited to, the terms, conditions, and rate of pay therefor. The  
12 requesting agency shall reimburse the Arkansas Employment Security Department  
13 for costs incurred in providing the requested information.

14           (2) The director shall promulgate regulations establishing such  
15 safeguards as are necessary to ensure that information disclosed, as  
16 authorized in this section to state and local child support enforcement agency  
17 officers and employees, is used only for purposes of establishing and  
18 collecting child support obligations from, and locating individuals owing the  
19 obligations, and to ensure that information disclosed, as authorized in this  
20 section, to officers and employees of the U.S. Department of Agriculture and  
21 to officers and employees of any state food stamp agency is used only for  
22 purposes of determining an individual's eligibility for benefits, or the  
23 amount of benefits under the food stamp program established under the Food  
24 Stamp Act of 1977.

25           (3) Information requested by the Department of Human Services and  
26 the Department of Finance and Administration under this subsection shall be  
27 released to the appropriate divisions of the respective departments on a basis  
28 in accordance with a plan to be developed between the appropriate division of  
29 each department and the Arkansas Employment Security Department.

30           (4) In addition to the above, wage information contained in the  
31 records of the Arkansas Employment Security Department shall be made available  
32 to the extent necessary for purposes of determining an individual's  
33 eligibility for aid or services or the amount of the aid or services that an  
34 individual may be entitled to under a state plan for aid and services to needy  
35 families with children approved under Part A of Title IV of the Social

1 Security Act to a state or political subdivision thereof charged with the  
2 responsibility of making the determinations when the information is  
3 specifically requested on an individual by name and social security number by  
4 the state or political subdivision for those purposes. The governmental agency  
5 or entity requesting any information under this subsection shall reimburse the  
6 Arkansas Employment Security Department for any and all costs incurred by the  
7 agency in making the requested information available.

8           (5) Officers or employees of the United States Department of  
9 Housing and Urban Development and representatives of a public housing agency  
10 shall be entitled to certain wage and unemployment compensation information  
11 with respect to individuals applying for or participating in any housing  
12 assistance program administered by the Department of Housing and Urban  
13 Development as provided for in Section 303 of the Social Security Act at 42  
14 U.S.C. 503, but only as and to the extent mandated by Section 904(c) of Public  
15 Law 100-628, the McKinney Homeless Act, and implementing regulations. The  
16 provisions of this subdivision shall cease to be effective on and after  
17 October 1, 1994, unless otherwise extended by federal law."

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19           SECTION 4. Arkansas Code Annotated 11-10-314 is amended by adding the  
20 following two new paragraphs (m) and (n) at the end thereof:

21           "(m) Beginning on and after January 1, 1995, the Insurance Department  
22 may be provided with a record containing the name and address of any lessor  
23 employing unit as defined at A.C.A 11-10-717(e). The Insurance Department  
24 shall be strictly prohibited from making any disclosure or redisclosure of any  
25 record containing confidential information provided by the Employment Security  
26 Department under this subsection.

27           (n) Beginning on and after January 1, 1995, the Workers\_ Compensation  
28 Commission, Health and Safety Division may be furnished for production of the  
29 Extra Hazardous Employer Identification Formula the following data to the  
30 extent such data is maintained in the department\_s computer database:

31 Employer Name, Federal Employer Identification Number, Employer Address and  
32 Plant Locations in Arkansas, Employer Telephone Number, Employer Standard  
33 Industrial Classification Code, Maximum Number of Employees by Calendar Year.  
34 The Workers' Compensation Commission shall use the data provided to it under  
35 this subsection only for production of the Extra Hazardous Employer

1 Identification Formula and shall take the steps necessary to protect the  
2 confidentiality of the data. Additionally, the Workers' Compensation  
3 Commission shall reimburse the Employment Security Department for any and all  
4 costs incurred by the department in making the information available."  
5

6 SECTION 5. Arkansas Code Annotated 11-10-507(3) is amended by adding  
7 the following additional paragraph (H):

8 "(H) The individual participates in reemployment services, such as job  
9 search assistance services, if the individual has been determined to be likely  
10 to exhaust regular benefits and to need reemployment services pursuant to a  
11 profiling system established by the director, as provided for in Section 4 of  
12 Public Law 103-152, unless the director determines that:

- 13 (i) the individual has completed such services; or
- 14 (ii) there is justifiable cause for the claimant\_s failure to  
15 participate in such services."

16  
17 SECTION 6. Arkansas Code Annotated 11-10-523(c) is amended to read as  
18 follows:

19 "(c) (1) The other two (2) members of the Board of Review are to serve  
20 when requested to serve by the chairman of the board at his own discretion.  
21 If any interested party requests in writing a review by the full board, then  
22 the chairman shall direct board members to attend and review the matters as  
23 requested by the petitioner.

24 (2) The members of the Board of Review other than the chairman  
25 shall receive as their compensation the sum of forty-five dollars (\$45.00) a  
26 day and necessary expenses to be paid from the Employment Security  
27 Administration Fund, when actually engaged in performing duties of the board  
28 as above prescribed."  
29

30 SECTION 7. Arkansas Code Annotated 11-10-611(a) is amended to read as  
31 follows:

32 "(a) If an individual works in the same week for an employer other than  
33 the shared work employer and his combined hours of work for both employers are  
34 greater than ninety percent (90%) of the normal hours of work with the shared  
35 work employer, he or she shall not be entitled to benefits under these shared

1 work provisions or the unemployment compensation provisions."

2

3 SECTION 8. Arkansas Code Annotated 11-10-703(a)(4) is amended to read  
4 as follows:

5 "(4) Benefits paid to an individual who continues to remain in the  
6 employ of a base-period employer without a reduction in the number of hours  
7 worked or wages paid shall not be charged to the separate account of such  
8 employer provided such individual is not employed on an as needed or on call  
9 basis."

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11 SECTION 9. Arkansas Code Annotated 11-10-708(c) is amended to read as  
12 follows:

13 "(c) On November 10 of each calendar year, the director shall transfer  
14 all assets of the Employment Security Advance Interest Trust Fund which exceed  
15 five million dollars (\$5,000,000) to the Unemployment Compensation Trust Fund  
16 provided the state has no interest-bearing advances obtained from the Federal  
17 Unemployment Trust Fund under Title XII of the Social Security Act  
18 outstanding. Notwithstanding any other provision of this section, all income  
19 from investment of the Employment Security Advance Interest Trust Fund earned  
20 during calendar years 1995 and 1996 shall be deposited and credited to the  
21 Employment Security Special Fund as set out in Section 11-10-716 of this law."

22 SECTION 10. Arkansas Code Annotated 11-10-803(a) is amended to read as  
23 follows:

24 "(a)(1) Money requisitioned from this state's account in the  
25 Unemployment Compensation Trust Fund shall be used exclusively for the payment  
26 of benefits and for refunds from the Unemployment Compensation Fund authorized  
27 by this chapter except that money credited to this state's account pursuant to  
28 § 903 of the Social Security Act, as amended, shall be used exclusively as  
29 herein provided. The director shall, from time to time, requisition from the  
30 Unemployment Compensation Trust Fund such amounts, not exceeding the amounts  
31 standing to this state's account therein, as he deems necessary for the  
32 payment of benefits and refunds for a reasonable future period. Upon receipt  
33 thereof, the money shall be deposited in the benefit account.

34 (2) For payments beginning on and after January 1, 1997, nothing in  
35 subsection (a)(1) shall be construed to prohibit deducting an amount from

1 unemployment compensation otherwise payable to an individual and using the  
2 amount so deducted to pay for the withholding of federal individual income tax  
3 if the individual elected to have such deduction made and such deduction was  
4 made in accordance with Public Law 103-465 and under a program approved by the  
5 Secretary of Labor."

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7 SECTION 11. All provisions of this act of a general and permanent  
8 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
9 Code Revision Commission shall incorporate the same in the Code.

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

16

17 SECTION 13. All laws and parts of laws in conflict with this act are  
18 hereby repealed.

19

20 SECTION 14. EMERGENCY. It is hereby found and determined by the  
21 General Assembly that in order to correct certain inequities in the payment  
22 and in the denial of benefits to unemployed workers, to make needed technical  
23 corrections and to bring the Arkansas Employment Security Law into conformity  
24 with the Federal Unemployment Tax Act, as amended, so that Arkansas employers  
25 may continue to receive the tax credits accorded by the Federal Unemployment  
26 Tax Act and the Arkansas workers may receive unemployment benefits when they  
27 are unemployed. Therefore, an emergency is hereby declared to exist and this  
28 act being necessary for the immediate preservation of the public peace, health  
29 and safety shall be in full force and effect from and after July 1, 1995.

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32 /s/Cassady

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34 APPROVED: 3-6-95

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