

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.

Act 1845 of the Regular Session

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005
4

As Engrossed: H2/23/05 S3/29/05

A Bill

HOUSE BILL 1795

5 By: Representative Ledbetter
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For An Act To Be Entitled

9 AN ACT TO PROHIBIT A STATE EMPLOYEE FROM
10 RETAINING WITNESS OR MILEAGE FEES WHEN SUBPOENAED
11 AS A WITNESS FOR A MATTER WITHIN THE SCOPE OF THE
12 EMPLOYEE'S EMPLOYMENT; AND FOR OTHER PURPOSES.
13

Subtitle

14 AN ACT TO PROHIBIT A STATE EMPLOYEE FROM
15 RETAINING WITNESS OR MILEAGE FEES WHEN
16 SUBPOENAED AS A WITNESS FOR A MATTER
17 WITHIN THE SCOPE OF THE EMPLOYEE'S
18 EMPLOYMENT.
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

24 SECTION 1. Arkansas Code § 5-2-317 is amended to read as follows:

25 5-2-317. Jurisdiction and venue.

26 (a) The circuit courts of this state shall have exclusive jurisdiction
27 over those persons acquitted by reason of mental disease or defect and
28 committed to the custody of the Director of the Department of Human Services
29 pursuant to § 5-2-314(b).

30 (b) Venue shall be determined as follows:

31 (1) For persons committed to the custody of the Department of
32 Human Services pursuant to § 5-2-314(b) and who have been committed to the
33 Arkansas State Hospital for examination, venue may be in Pulaski County for
34 the initial hearing pursuant to § 5-2-314 and for conditional release
35 hearings pursuant to § 5-2-315.



1 (2) For persons who have been conditionally released pursuant to
2 § 5-2-315, venue for any hearing seeking the modification, revocation, or
3 dismissal of a conditional release order shall be in the county where the
4 person currently resides.

5 ~~(3) The witness and travel fees, as provided for in the Arkansas~~
6 ~~Rules of Civil Procedure, for employees of a designated receiving facility~~
7 ~~whose presence is compelled pursuant to a subpoena shall be paid by the~~
8 ~~designated receiving facility to which the acquittee is, or will be,~~
9 ~~conditionally released.~~

10
11 SECTION 2. Arkansas Code § 11-10-314(1), pertaining to payment for
12 witnesses from the Employment Security Department, is amended to read as
13 follows:

14 (1)(1) Upon receipt of an order from a court of record of this state
15 by the director for information pertaining to an individual's current wage
16 file and unemployment benefit payment record as contained in the records of
17 the Arkansas Employment Security Department, the information shall be made
18 available to the court for the purpose of determining an amount of support to
19 be set during a proceeding for the establishment or collection of child
20 support obligations or both.

21 (2) A photocopy of the records containing the information or a
22 statement that no information for the requested individual is contained in
23 the file of the Arkansas Employment Security Department under the official
24 seal of the director shall be received into evidence in the court of record.

25 (3) The court order shall be satisfied by mailing the document
26 under seal directly to the court of record within ten (10) working days of
27 receipt of the court order unless a motion challenging the information is
28 filed or a subpoena is issued requiring the appearance of an employee of the
29 Arkansas Employment Security Department with the court within thirty (30)
30 days prior to the trial.

31 ~~(4) The moving party challenging the information or requesting~~
32 ~~the subpoena to testify or other evidentiary hearing shall post a bond with~~
33 ~~the court in an amount determined by the court but not less than two hundred~~
34 ~~fifty dollars (\$250) to cover the cost of the appearance of the officer or~~
35 ~~employee of the Arkansas Employment Security Department as a witness at the~~
36 ~~trial or other evidentiary proceeding.~~

1 ~~(5)(A) If an appearance is required, the Arkansas Employment~~
2 ~~Security Department shall be awarded a witness fee to cover the actual costs~~
3 ~~of the appearance of the witness.~~

4 ~~(B) Such award shall be taxed by the court as other costs~~
5 ~~in the case.~~

6 ~~(6)(4)~~ (4) The director shall comply with the court order for
7 information if the following conditions are met:

8 (A) The order is delivered at least ten (10) workdays
9 prior to the date the information is required;

10 (B) The court order includes the name and social security
11 number of the individual for whom information is requested; and

12 (C) The court order is accompanied by the payment of ten
13 dollars (\$10.00) by the moving party seeking the information to the Arkansas
14 Employment Security Department for costs associated with producing the
15 information.

16 ~~(7)(5)~~ (5) Provided, however, the Arkansas Employment Security
17 Department may not release information under this subsection (1) if the
18 United States Secretary of Labor rules that release of the information would
19 be grounds to find that the state is in substantial noncompliance with 42
20 U.S.C. § 503 or 26 U.S.C. § 3304.

21
22 SECTION 3. Arkansas Code § 21-4-213 is amended to read as follows:
23 21-4-213. Court and jury leave.

24 (a) Any A state employee serving as a juror or subpoenaed as a
25 witness to give a deposition in a court or hearing not involving personal
26 litigation or service as a paid expert witness outside the scope of state
27 employment in state or federal court shall be entitled to full compensation
28 in addition to any fees paid for such services, and such services or
29 necessary appearances in any court shall not be counted as annual leave.

30 (b) If a state employee is subpoenaed as a witness to give a
31 deposition or testimony in state or federal court, at a hearing, or before
32 any body with power to issue a subpoena, the state employee is:

33 (1) Entitled to his or her salary if the employee is a witness
34 in a matter:

35 (A) Within the employee's scope of state employment; or

36 (B)(i) Outside the employee's scope of state employment;

1 and

2 (ii) The employee is not serving as a paid expert
3 witness or is not a party to the matter; and

4 (2) Required to take annual leave to attend the deposition,
5 hearing, or appear in court only if the matter is outside of the employee's
6 scope of state employment and the employee is serving as a paid expert
7 witness or is a party to the matter.

8 (c)(1) If a law enforcement officer is subpoenaed to appear at a time
9 when the officer is not scheduled for regular duty:

10 (A) This section shall not apply; and

11 (B) A law enforcement officer shall be entitled to retain
12 witness and mileage fees tendered to the officer.

13 (2) As used in this section, "law enforcement officer" means any
14 public servant vested by law with a duty to maintain public order or to make
15 arrests for offenses.

16
17 SECTION 4. Arkansas Code § 23-112-509(b), pertaining to witnesses
18 before the Arkansas Motor Vehicle Commission, is amended to read as follows:

19 (b)(1) The sheriffs and constables serving and returning any summons,
20 citation, or subpoena shall be paid the same fees as provided for the
21 services in the circuit court.

22 (2) Any person who appears before the commission, ~~or a duly~~
23 ~~designated employee thereof~~ other than an employee of the commission, in
24 response to a summons, citation, or subpoena shall be paid the same witness
25 fee and mileage allowance as witnesses in the circuit court.

26
27 SECTION 5. Arkansas Code Title 16, Chapter 43, Subchapter 8 is amended
28 to add a new section to read as follows:

29 16-43-808. State employee as a witness.

30 (a) If a state employee is subpoenaed as a witness to give a
31 deposition or testimony in state or federal court, at a hearing, or before
32 any body with power to issue a subpoena, the state employee is:

33 (1) Entitled to retain any witness fees that may be tendered to
34 him or her under state or federal law or court rules only if the matter is:

35 (A) Outside the employee's scope of state employment; or

36 (B) The employee is a party to the matter other than as a

1 representative of the state employer.

2 (2) Entitled to retain any mileage fees that may be tendered to
3 him or her under state or federal law or court rules only if the matter is:

4 (A)(i) Within the employee's scope of state employment;

5 (ii) The employee uses a personal vehicle for travel
6 in obeying the subpoena; and

7 (iii) The employee's employer does not reimburse the
8 employee for travel expenses; or

9 (B) Outside the employee's scope of state employment and
10 the employee does not use a state-owned vehicle for travel in obeying the
11 subpoena.

12 (b) If the state employee is subpoenaed for purposes under subsection
13 (a) to appear on a non-work day, the employee may retain any witness and
14 mileage fees tendered to him or her.

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16 /s/ Ledbetter

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19 APPROVED: 04/08/2005

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