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2 93rd General Assembly
3 Regular Session, 2021

A Bill

SENATE BILL 299

4
5 By: Senator J. English

For An Act To Be Entitled

8 AN ACT TO AMEND THE DIVISION OF WORKFORCE SERVICES
9 LAW RELATED TO THE DISCLOSURE OF INFORMATION; AND FOR
10 OTHER PURPOSES.

Subtitle

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14 TO AMEND THE DIVISION OF WORKFORCE
15 SERVICES LAW RELATED TO THE DISCLOSURE OF
16 INFORMATION.

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

20
21 SECTION 1. Arkansas Code § 11-10-314(a)-(d), concerning the disclosure
22 of information by the Division of Workforce Services, is amended to read as
23 follows:

24 (a)(1) Except as otherwise provided in this section, information
25 obtained by the Director of the Division of Workforce Services from any
26 employing unit or individual pursuant to the administration of this chapter
27 and any determination as to the rights or status of any employer or
28 individual made by the director pursuant to the administration of this
29 chapter shall be held confidential ~~and~~, shall be protected by government
30 privilege, and is exempt from the Freedom of Information Act of 1967, § 25-
31 19-101 et seq.

32 (2)(A) The information in subdivision (a)(1) of this section
33 shall not be used in any action or proceeding before any court,
34 administrative tribunal, or body except those created by this chapter unless
35 the Division of Workforce Services is a party, a real party in interest, or a
36 complainant therein or unless the litigation involves criminal actions



1 ~~brought under provisions of~~ associated with this chapter.

2 (B) This information shall not be otherwise disclosed or
3 be open to public inspection in any manner revealing the individual's or
4 employing unit's identity.

5 (b)(1) ~~Information~~ Upon request, information from the records of the
6 Division of Workforce Services that concerns a claim for benefits shall be
7 ~~available for inspection and copying by~~ provided to any interested party ~~or~~
8 ~~his or her legal representative~~ to the extent necessary for the proper
9 representation of his or her position in any proceeding under this chapter.

10 (2) Notwithstanding any other provision of this chapter or any
11 other law:

12 (A) ~~Any~~ Upon request, a claimant may be ~~supplied, subject~~
13 ~~to such restrictions as the director may by rule prescribe,~~ provided with any
14 information contained only in the payment record of his or her unemployment
15 insurance benefit ~~payment record~~ claim or with information on his or her most
16 recent monetary determination;

17 (B) ~~Any individual or employer may be provided any~~
18 ~~information from the records of the Division of Workforce Services to the~~
19 ~~extent that the information was provided by him or her~~ In the absence of a
20 pending proceeding under this chapter, confidential information from the
21 records of the Division of Workforce Services may upon request be provided
22 only to an:

23 (i) Individual to the extent that the information
24 was provided by that individual; or

25 (ii) Employer to the extent that the information was
26 provided by that employer; and

27 (C) ~~Any~~ Upon request, a job applicant may be provided with
28 evidence of his or her registration for work.

29 (3) An individual or employer who may obtain confidential
30 information under subsection (b) of this section may authorize the disclosure
31 of the confidential information on his or her behalf on the basis of informed
32 consent as follows:

33 (A) To an agent who acts for or in the place of an
34 individual or an employer by the authority of that individual or employer as
35 follows:

36 (i) Upon presentation of a written release from the

1 individual or business being represented, or if a release is not practical,
2 upon the presentation of a form of consent as is permitted by the agency in
3 accordance with state law;

4 (ii) In the case of an elected official performing
5 constituent services upon presentation by the official of reasonable
6 evidence, including a letter from the individual or employer requesting the
7 official's assistance or a written record of a telephone or electronic
8 request from the individual or employer, that the individual or employer has
9 authorized the disclosure; or

10 (iii) In the case of an attorney retained for
11 purposes related to unemployment compensation law, upon the attorney
12 asserting that he or she represents the individual or employer in that
13 matter; or

14 (B) To a third party, other than an agent, or a disclosure
15 made on an ongoing basis even if to an agent, but only if:

16 (i) The recipient of the confidential information
17 obtains a written release from the individual or employer to whom the
18 information pertains that:

19 (a) Is signed by the individual or employer to
20 whom the confidential information pertains;

21 (b) Contains a statement specifically
22 identifying the confidential information to be disclosed;

23 (c) Contains a statement that state government
24 files will be accessed to obtain the confidential information;

25 (d) Contains a statement of the specific
26 purpose or purposes for which the confidential information is sought, and a
27 statement that confidential information obtained under the release will be
28 used only for that purpose or purposes; and

29 (e) Contains a statement indicating all the
30 parties who may receive the confidential information disclosed; and

31 (ii) The purpose for which confidential information
32 may be disclosed under subdivision (b)(3)(B)(i) of this section is limited
33 to:

34 (a) Providing a service or benefit to the
35 individual signing the release that such individual expects to receive as a
36 result of signing the release; or

1 (b) Carrying out administration or evaluation
2 of a public program to which the release pertains.

3 (c)(1) Except as otherwise provided in this section, upon request, the
4 director may provide the confidential information to a public official for
5 use in the performance of his or her official duties in compliance with
6 applicable state and federal law.

7 (2) Confidential information that may be disclosed to a public
8 official may also be disclosed to the agent or contractor of the public
9 official, subject to the same terms and conditions applicable to the
10 disclosure to the public official and subject to the written agreement
11 between the director and the public official that the public official shall
12 be responsible for ensuring that the agent or contractor complies with the
13 requirements of applicable state and federal law.

14 ~~(e)(1)(A)(d)(1)(A)~~ Subject to such restrictions as the director may by
15 ~~rule prescribe, the~~ The confidential information may be made available to any
16 agency of this or any other state, or to any federal agency, charged with the
17 administration of an unemployment compensation law or the maintenance of a
18 system of public employment offices, to the Internal Revenue Service for
19 unemployment compensation tax administration, to the United States
20 Citizenship and Immigration Services for verifying the claimant's immigration
21 status, to the Office of Federal Contract Compliance Programs, to the United
22 States Bureau of Labor Statistics for use exclusively for statistical
23 purposes under a cooperative agreement, or to any state or federal agency for
24 income or eligibility verification purposes ~~but except as may otherwise be~~
25 ~~provided in this section and § 11-10-305 [repealed], §§ 11-10-306 — 11-10-312~~
26 ~~and 11-10-315 — 11-10-318 only as and to the extent~~ if mandated by Pub. L.
27 No. 98-369 and implementing regulations promulgated thereunder by the United
28 States Department of Labor or unless otherwise provided for in this section
29 and §§ 11-10-306 – 11-10-312 and 11-10-315 – 11-10-318.

30 (B) The information obtained in connection with the
31 administration of the employment service may be made available to persons or
32 agencies for purposes appropriate to the operation of a public employment
33 service.

34 (2) Upon request, the director shall furnish to any agency of
35 the United States charged with the administration of public works or
36 assistance through public employment and may furnish to any state agency

1 similarly charged, the name, address, ordinary occupation, and employment
2 status of each recipient of benefits and the recipient’s rights to further
3 benefits under this chapter.

4 ~~(d)~~(e) The director may request the United States Comptroller of the
5 Currency to cause an examination of the correctness of any return or report
6 of any national banking association rendered pursuant to the provisions of
7 this chapter and may in connection with this request transmit any report or
8 return to the United States Comptroller of the Currency as provided in
9 ~~section 1606(e) [repealed] of the Internal Revenue Code of 1939~~ applicable
10 state and federal law.

11 (f) Upon request, the director shall make unemployment compensation
12 records available to the United States Railroad Retirement Board and shall
13 furnish copies of the records to the United States Railroad Retirement Board
14 as the United States Railroad Retirement Board deems necessary for its
15 purposes.

16 (g)(1) Information obtained in the administration of this chapter and
17 in the administration of and concerning programs under the Workforce
18 Innovation and Opportunity Act, Pub. L. No. 113-128, by the Division of
19 Workforce Services, in compliance with applicable state and federal law, may
20 be disclosed:

- 21 (A) To public officials;
- 22 (B) To agents or contractors of public officials; and
- 23 (C) On the basis of informed consent.

24 (2)(A) In order to comply with section 116(e)(4) of the
25 Workforce Innovation and Opportunity Act, Pub. L. No. 113-128, the director
26 shall, to the extent practicable, cooperate in the conduct of evaluations of
27 state programs as identified in section 116(e)(1) of the Workforce Innovation
28 and Opportunity Act, Pub. L. No. 113-128, including related research projects
29 and as provided for by the United States Secretary of Labor or the United
30 States Secretary of Education.

31 (B) Upon request, the director shall make confidential
32 information available to a federal official or an agent or contractor of a
33 federal official requesting the information in the course of the evaluations.
34

35 SECTION 2. Arkansas Code § 11-10-314(h), concerning disclosures by the
36 Director of the Division of Workforce Services for Workforce Innovation and

1 Opportunity Act purposes, is repealed.

2 ~~(h)(1) Notwithstanding any other provisions of this chapter,~~
3 ~~information obtained in the administration of this chapter and in the~~
4 ~~administration of and concerning programs under the Workforce Innovation and~~
5 ~~Opportunity Act, Pub. L. No. 113-128, programs by the Division of Workforce~~
6 ~~Services shall be made available to persons and agencies for purposes~~
7 ~~appropriate to the Division of Workforce Services' operation and~~
8 ~~administration of programs under the Workforce Innovation and Opportunity~~
9 ~~Act, Pub. L. No. 113-128.~~

10 ~~(2) Under an agreement between the Division of Workforce~~
11 ~~Services and the appropriate agencies, the director shall establish~~
12 ~~safeguards as are necessary to protect the confidential information made~~
13 ~~available pursuant to this section.~~

14
15 SECTION 3. Arkansas Code § 11-10-314(j), concerning the list of
16 agencies to whom the Director of the Division of Workforce Services may
17 provide certain specific information, is repealed.

18 ~~(j) For use in furthering the economic development of the State of~~
19 ~~Arkansas, the director may provide, to the extent that it is available, the~~
20 ~~following information obtained in the administration of this chapter to the~~
21 ~~state agencies specified:~~

22 ~~(1) The Arkansas Economic Development Council and the Arkansas~~
23 ~~Economic Development Commission may be provided:~~

24 ~~(A) The employer's name, mailing address, and business~~
25 ~~location in Arkansas, the name of the owner, chief executive officer, or~~
26 ~~plant manager, the current number of employees, and the code for each~~
27 ~~employer classified by the agency in Standard Industrial Classification Codes~~
28 ~~20-87 or the equivalent classification codes under the North American~~
29 ~~Industry Classification System; and~~

30 ~~(B) The claims status of workers hired by employers under~~
31 ~~the Arkansas Economic Development Council's Arkansas Enterprise Zone Program~~
32 ~~authorized by the Arkansas Enterprise Zone Act of 1993, § 15-4-1701 et seq.,~~
33 ~~and the Arkansas Economic Development Act of 1995, § 15-4-1901 et seq.,~~
34 ~~provided that either the Arkansas Economic Development Council or the~~
35 ~~Arkansas Economic Development Commission submits a list of workers by name~~
36 ~~and Social Security number;~~

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SECTION 4. Arkansas Code § 11-10-314(k), concerning the prohibition of disclosure of confidential information by the entities listed in § 11-10-314(j), is repealed.

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

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

~~(3) The governmental agency or entity requesting any information under subsection (j) of this section shall reimburse the Division of Workforce Services for any and all costs incurred by the agency in making the requested information available.~~

~~(4) Information requested by the state entities specified in subsection (j) of this section shall be released to the appropriate entities in accordance with agreements between these entities and the Division of Workforce Services.~~

SECTION 5. Arkansas Code § 11-10-314(m) and (n), concerning the provision of information from the Division of Workforce Services to the State Insurance Department and to the Workers' Health and Safety Division, are repealed.

~~(m)(1) Beginning on and after January 1, 1995, the State Insurance Department may be provided with the name and address of any lessor employing unit as defined in § 11-10-717(e).~~

~~(2) The State Insurance Department shall be strictly prohibited from making any disclosure or redisclosure of any record containing confidential information provided by the Division of Workforce Services under this subsection.~~

~~(n)(1) The Workers' Health and Safety Division may be furnished, for production of the extra-hazardous employer identification formula, the following data to the extent that such data is maintained in the Division of Workforce Services' computer database:~~

1 or other compulsory process if the court has not already ruled on the
2 disclosure or if other means of avoiding the disclosure are unsuccessful.

3 (B) The director or recipient of confidential information
4 may disclose the confidential information only if the motion to quash is
5 denied, but then only under such terms as the court orders to protect the
6 confidentiality of the information and to reimburse the costs of disclosure
7 to the Division of Workforce Services.

8 (C) The recipient of confidential information, as a
9 condition of receiving such information, shall be required to notify the
10 director immediately upon being served with a subpoena or other compulsory
11 process seeking disclosure of confidential information.

12 ~~(2) Nothing in this section shall be deemed to prohibit the~~
13 ~~Division of Workforce Services from providing information subpoenaed by the~~
14 ~~Attorney General in any case. The motion to quash is not required by the~~
15 ~~director if:~~

16 (A) The subpoena or other compulsory process has been
17 served, and a court of competent jurisdiction has previously issued a binding
18 precedential decision that requires disclosures of this type, or a well-
19 established pattern of prior court decisions have required disclosures of
20 this type; or

21 (B)(i) The subpoena is issued by a local, state, or
22 federal governmental official with authority to obtain the information by
23 subpoena, other than a clerk of court on behalf of a litigant.

24 (ii) The director may provide the confidential
25 information to these officials without the actual issuance of a subpoena if
26 the official provides the director with information from which the director
27 may determine that the official has subpoena authority for the information to
28 be disclosed in compliance with the requirements of applicable state and
29 federal law.

30
31 SECTION 8. Arkansas Code § 11-10-314(r)(4), concerning a subpoena
32 submitted to the Director of the Division of Workforce Services is repealed.

33 ~~(4) In cases except as provided in subdivision (r)(1) of this~~
34 ~~section, the director shall:~~

35 ~~(A) First move to quash the subpoena; and~~

36 ~~(B) Honor the subpoena and subpoenas dealing with similar~~

1 ~~subject matter, but only if a court of competent jurisdiction finds that the~~
2 ~~need to examine the subpoenaed information outweighs the express policy of~~
3 ~~maintaining confidentiality in matters involving individuals and employers~~
4 ~~dealing with the Division of Workforce Services.~~

5

6 SECTION 9. Arkansas Code § 11-10-314(s), concerning audits performed
7 by the Department of Finance and Administration, is amended to read as
8 follows:

9 (s)(1) To perform audit and compliance duties, ~~the Department of~~
10 ~~Finance and Administration~~ federal and state agencies may be provided
11 unemployment insurance contribution information reported by companies doing
12 business in Arkansas, including without limitation employer name, employer
13 address, employer telephone number, federal employer identification number,
14 and tax identification number of employees.

15 (2) ~~The Department of Finance and Administration~~ recipient
16 agency shall not make any disclosure or redisclosure of the confidential
17 information provided under subdivision (s)(1) of this section.

18

19 SECTION 10. Arkansas Code § 11-10-314, concerning the disclosure of
20 information by the Division of Workforce Services, is amended to add an
21 additional subsection to read as follows:

22 (t)(1)(A) Grant funds paid to the state for unemployment compensation
23 administration may be used to pay only the costs of those disclosures
24 necessary for the proper administration of the unemployment compensation
25 program in accordance with the requirements of applicable state and federal
26 law.

27 (B) All other costs for disclosures of confidential
28 information shall be paid to the Division of Workforce Services by the
29 recipient as a condition of receipt of the information in accordance with the
30 requirements of applicable state and federal law.

31 (2)(A) The director and the recipient of confidential data under
32 this section shall enter into a data-sharing agreement in accordance with the
33 requirements of applicable state and federal law.

34 (B) In the event that a data-sharing agreement is not
35 required, the recipient shall safeguard and hold secure the confidential data
36 in accordance with the requirements of applicable state and federal law.

1 (C) A publication of an analysis of confidential data
2 shall be done in strict accordance with the rules used by the agency and as
3 prescribed by the United States Bureau of Labor Statistics to prevent the
4 disclosure of individual employer or individual claimant information, unless
5 otherwise specifically authorized by federal law.

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