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Proposed Rulemaking

Title

Promulgated by:
Department of Labor and Licensing

Title 11. Labor and Industrial Relations

Chapter III. Generally, Department of Labor and Licensing

Subchapter A. Generally

Part 11. Minimum Wage

Subpart 1. Generally

11 CAR § 11-101. Minimum wage and overtime.

(a) The Minimum Wage Act of the State of Arkansas is codified at Arkansas Code § 11-4-201 et seq.

(b) The ~~Director~~Secretary of the ~~Division~~Department of Labor and Licensing is authorized to promulgate administrative rules for the administration and enforcement of the law, Arkansas Code § 11-4-209.

11 CAR § 11-102. Definitions.

As used in this part:

(1) "Act" means the Minimum Wage Act of the State of Arkansas, Arkansas Code § 11-4-201 et seq.;

(2)(A) "Agriculture" means farming in all its branches and, among other things, includes:

- (i) The cultivation and tillage of the soil;
- (ii) Dairying;

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(iii) The production, cultivation, growing, and harvesting of any agricultural or horticultural commodities;

(iv) The raising of livestock, bees, fur-bearing animals, or poultry; and

(v) Any practices, ~~(including any forestry or lumbering operations)~~, performed by a farmer or on a farm as ~~an incidental~~incidental to or in conjunction with such farming operations, including:

(a) Preparation for market; and

(b) Delivery to storage or to market, or to carriers for transportation to market.

(B) "Agriculture" ~~also~~ includes the catching, taking, propagating, harvesting, cultivating, or farming of any kind of:

(i) Fish;

(ii) Shellfish;

(iii) Crustacean;

(iv) Sponges;

(v) Seaweeds; or

(vi) Other aquatic forms of animal and vegetable life.

(C) "Agriculture" also includes cotton ginning and work performed as necessary and incidental to cotton ginning in an establishment primarily engaged in the ginning of cotton, including all work exempt from overtime pursuant to the provisions of 29 U.S.C. § 213(h) and (i);

~~(3) "Director" means the Director of the Division of Labor, Department of Labor and Licensing;~~

~~(4)(3)~~ "Employ" means to suffer or permit to work;

~~(5)(4)~~ "Employee" means any individual employed by an employer, but does not include those individuals specifically excluded by Arkansas Code § 11-4-203(3) and 11 CAR § 11-601 et seq.;

~~(6)(A)~~ ~~(5)(A)~~ "Employer" means any individual, partnership, association, corporation, business trust, the state, any political subdivision of the state, or any

person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee.

(B) The term "employer" shall not include any individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee for any workweek in which fewer than four (4) employees are employed; and

~~(7)-(6) "Manager" "Secretary" or "Secretary of the Department of Labor and Licensing" means the Manager of the Labor Standards Section, Division of Labor, Secretary of the Department of Labor and Licensing or his or her designee or authorized representative; and~~

~~————(8) "Section" means the Labor Standards Section, Division of Labor, Department of Labor and Licensing.~~

11 CAR § 11-103. Rules incorporated by reference.

(a)(1) Throughout this part, the ~~Division of Labor~~ Secretary of the Department of Labor and Licensing has adopted by reference and incorporated herein certain sections or parts of the Code of Federal Regulations (C.F.R.) or the United States Code (U.S.C.).

(2) In all cases, references to volume 29 of the Code of Federal Regulations shall mean the July 2018 edition, specifically 29 C.F.R. pts. 500-899 (July 1, 2018).

(3) References to the United States Code in relation to overtime exemptions contained in Arkansas Code § 11-4-211(d) and (e) mean 29 U.S.C. §§ 207(k), 213(b)(1) — (b)(24), and (b)(28) — (b)(30) (July 1, 2005).

(4) In all other cases, references to the United States Code means the U.S.C. as it existed on July 1, 2018.

(5) This part does not include any later editions or amendments to the United States Code or the Code of Federal Regulations.

(b) Copies of the incorporated matter may be obtained at cost from the Labor Standards Section of the Department of Labor and Licensing, or may be purchased directly from the United States Government Printing Office.

(c) Copies of the incorporated matter may be viewed on the website of the United States Department of Labor as follows:

(1) The federal Fair Labor Standards Act of 1938, 29 U.S.C. § 201 et seq., <https://www.dol.gov/whd/regs/statutes/FairLaborStandAct.pdf>;

(2) Federal regulations, https://www.dol.gov/dol/cfr/Title_29/Chapter_V.htm.

Subpart 2. Records to be Kept by Employer

11 CAR § 11-201. General requirements.

(a) Every employer shall maintain and preserve payroll or other records which are true and accurate, and which contain the following information and data for each employee:

(1) Name in full, as used for Social Security recordkeeping purposes, and on the same record, any identifying symbol or number used in place of name on any time, work, or payroll records;

(2) Home address, including zip code;

(3) Date of birth, if under nineteen (19) years of age;

(4) Sex and occupation;

(5)(A) Time of day and day of week on which the employee's workweek begins.

(B) A single notation will suffice if the entire workforce in an establishment have the same workweek and workday beginning;

(6) Regular hourly rate of pay for any workweek in which overtime compensation is due, as well as the basis on which wages are paid, such as:

(A) Per hour;

(B) Per day;

(C) Per week;

(D) Per piece; or

(E) Rate of commission;

(7) Hours worked each workday and total hours worked each workweek;

(8) Total daily or weekly straight time earnings or wages due for hours worked during the workday or workweek, exclusive of overtime compensation;

(9)(A) Total overtime compensation.

(B) This amount excludes the straight-time earnings for overtime hours recorded under subdivision (a)(8) of this section;

(10) Total additions or deductions from wages paid each pay period, as well as the nature of the items which make up the additions or deductions;

(11) Total wages paid each pay period; and

(12) Date of payment and the pay period covered by payment.

(b)(1) For employees working on fixed schedules, an employer may maintain records showing, instead of the hours worked each day and each workweek, the schedule of daily and weekly hours and a statement or other method or recordkeeping that indicates that such hours were in fact actually worked.

(2) In weeks in which more or less than the scheduled hours are worked, the exact number of hours worked each day and each week must be recorded.

(c) Each employer shall maintain and preserve the records required by this part for a period of at least three (3) years.

(d)(1) No particular form of records is prescribed.

(2) The records must be accessible and clear and identifiable.

(3) In the event that records are maintained in a format other than paper, such as electronically or on microfilm, adequate projection, viewing, or copying equipment must be available.

(e)(1) Each employer shall keep the records required by this part safe and accessible at the place or places of employment or in a central recordkeeping office in Arkansas.

(2) In unusual circumstances, an employer may petition the Director-Division of Labor of the Division-Department of Labor and Licensing to maintain the records outside the state.

(3) Such approval must be obtained in advance.

(4) In the event the ~~director~~division approves such records to be maintained outside the state, the employer shall make such records available for inspection, transcription, or copying by the ~~Division of Labor~~division in Arkansas within seventy-two (72) hours following notice from the division.

(f) Posting of notices.

(1) Every employer employing an employee subject to the Minimum Wage Act of the State of Arkansas, Arkansas Code § 11-4-201 et seq., shall post and keep posted a notice approved by the ~~director~~division explaining and summarizing the requirements of the act and this part.

(2) Such notice shall be posted in a conspicuous and accessible place in every establishment where such employees are employed.

(g) All records shall be available for inspection, transcription, or copying by the division.

11 CAR § 11-202. Special circumstances.

(a) **Exempt from minimum wage and overtime.** With respect to employees exempt from both the minimum wage and overtime provisions of the Minimum Wage Act of the State of Arkansas, Arkansas Code § 11-4-201 et seq., an employer shall maintain and preserve those records listed in 11 CAR § 11-201(a)(1)-(5).

(b) **Exempt from overtime.** With respect to employees exempt from the overtime provisions of the act pursuant to Arkansas Code § 11-4-211(e), an employer shall maintain and preserve all those records listed in 11 CAR § 11-201(a), except those outlined in 11 CAR § 11-201(a)(6) and (a)(9).

(c) **Tipped employees.** With respect to each tipped employee whose wages are determined pursuant to Arkansas Code § 11-4-212, the employer shall maintain and preserve payroll or other records containing all the information and data required in 11 CAR § 11-201(a) and, in addition, the following:

(1) A symbol, letter, or other notation placed on the pay records identifying each employee whose wage is determined in part by tips;

(2) Weekly or monthly amount reported by the employee, to the employer, of tips received (this may consist of reports made by the employees to the employer on IRS Form 4070); and

(3)(A) Amount by which the wages of each tipped employee have been deemed to be increased by tips as determined by the employer.

(B) The tip credit may vary, provided that at least two dollars and sixty-three cents (\$2.63) per hour is paid in wages other than gratuities to the employee, see 11 CAR § 11-705.

(C) The amount per hour which the employer takes as a tip credit shall be reported to the employee in writing each time it is changed from the amount per hour taken in the preceding week.

(D) Hours worked each workday in any occupation in which the employee does not receive tips, and total daily or weekly straight-time payment made by the employer for such hours.

(E) Hours worked each workday in occupations in which the employee receives tips, and total daily or weekly straight-time earnings for such hours.

(d) Employees receiving board, lodging, or other facilities.

(1) In addition to other records required by this part, an employer who makes a deduction from the wages of employees for board, lodging, or other facilities pursuant to Arkansas Code § 11-4-213, shall maintain and preserve records substantiating the cost of furnishing the board, lodging, or other facilities.

(2) Such records shall include itemized accounts showing the nature and amount of any expenditures entering into the computation of the costs.

(e) **Sub-minimum wage authorizations.** In addition to other records required by this part, an employer shall maintain and preserve the following records as applicable, any:

(1) Certificate of eligibility to pay a sub-minimum wage to a full-time student pursuant to:

(A) Arkansas Code § 11-4-210(b); and

(B) 11 CAR § 11-301 et seq.;

(2) Permit or authorization to pay a student-learner a sub-minimum wage pursuant to:

(A) Arkansas Code § 11-4-215; and

(B) 11 CAR § 11-401; and

(3) Permit or authorization to employ disabled persons at wages less than the applicable minimum wage pursuant to:

(A) Arkansas Code § 11-4-214; and

(B) 11 CAR § 11-501 et seq.

(f) **Other recordkeeping requirements.** Additional ~~record-keeping~~recordkeeping requirements are contained:

(1) In 11 CAR § 11-602 for bona fide executive, administrative, and professional employees; and

(2) In 11 CAR § 11-604 for employees of state and local government, including employees engaged in fire protection or law enforcement activities.

11 CAR § 11-203. Recording working time.

(a) Differences between clock records and actual hours worked.

(1) Time clocks are not required but are typically an extremely helpful tool for providing the clear and identifiable records required by this part.

(2) ~~(A) In those cases where~~ If time clocks are used~~;~~:

~~(A) employees~~ Employees who voluntarily come in before their regular starting time or remain after their regular closing time~~;~~ do not have to be paid for such periods ~~provided, of course, that they do not engage in any~~ except for actual work performed before the regular starting time or after the regular closing time; and

(B) ~~Their~~ An early or late clock punching may be disregarded if no work is performed before the regular starting time or after the regular closing time.

(3) Minor differences between the clock records and actual hours worked cannot ordinarily be avoided, but major discrepancies should be discouraged since they raise a doubt as to the accuracy of the records of the hours actually worked.

(b) Rounding practices.

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(1) It has been found that in some industries, particularly where time clocks are used, there has been the practice for many years of recording the employees' starting time and stopping time by rounding to the nearest five (5) minutes, or to the nearest one-tenth (1/10) or quarter (1/4) of an hour.

(2) ~~Presumably, this arrangement averages out so that the employees are fully compensated for all the time they actually work.~~

~~—(3)~~ For enforcement purposes, this rounding practice of computing working time will be accepted, provided that it is used in such a manner that it will does not result, over a period of time, in failure to compensate the employees properly for all the time they have actually worked.

Subpart 3. Employment of Full-time Students at Sub-minimum Wages

11 CAR § 11-301. Conditions of employment.

(a) An employer may pay a full-time student a sub-minimum wage of not less than eighty-five percent (85%) of the applicable minimum wage rate, provided the following conditions are met:

(1) The employer has, in advance of employment at less than the applicable minimum wage rate, a full-time student certificate issued by the ~~department~~Division of Labor of the Department of Labor and Licensing;

(2) The full-time student attends an accredited institution of education within the State of Arkansas on a full-time basis in accordance with the institution's definitions;

(3) The employer does not employ the student more than:

(A) Twenty (20) hours per week during times school is in session; and

(B) Forty (40) hours per week during times school is not in session; and

(4) Notwithstanding subdivision (a)(3) of this section, the employer does not employ the student in violation of any applicable child labor laws.

(b) A full-time student retains that status during the student's Christmas, summer, and other vacations.

(c) Notwithstanding subdivision (a)(2) of this section, a full-time student residing in a border town may attend an accredited institution of education within the border sister state on a full-time basis and qualify for the sub-minimum wage allowed by this part, provided the student is otherwise qualified.

11 CAR § 11-302. Full-time student certificates.

(a) An application for a full-time student certificate shall be made on a form approved by the ~~Division of Labor~~Division of Labor -of the Department of Labor and Licensing and shall require submission of verification from an accredited institution of education within the State of Arkansas or within a border town in a qualifying border sister state that the student is a full-time student in accordance with the institution's definition of same.

(b) A full-time student certificate:

- (1) ~~Will~~May be issued for a period of one (1) year; and
- (2) Shall not be valid upon its expiration.

(c) A full-time student certificate issued by the United States Department of Labor pursuant to 29 C.F.R. § 519~~7~~; is acceptable in lieu of one issued by the ~~division~~division. ~~however~~However, the employer is responsible for complying with the other conditions of employing full-time students at a sub-minimum wage rate provided in 11 CAR § 11-301 of this part, including payment of wages at not less than eighty-five percent (85%) of the minimum wage established by Arkansas Code § 11-4-210.

Subpart 4. Student Learners and Apprentices

11 CAR § 11-401. Student learners, learners, and apprentices.

An employer may employ a learner, a student learner, or an apprentice at a sub-minimum wage, provided:

- (1) For learners and apprentices, the employer:

(A) Has current and valid certification from the United States Department of Labor to employ learners and apprentices at a sub-minimum wage pursuant to 29 C.F.R. §§ 520.400 — 520.412; and

(B) Pays wages to such learners and apprentices at a rate of not less than eighty-five percent (85%) of the minimum wage rate established by Arkansas Code § 11-4-210(a); and

(2) For student learners, the employer:

(A) Has current and valid certification from the United States Department of Labor to employ student-learners at a sub-minimum wage pursuant to 29 C.F.R. §§ 520.500 — 520.508; and

(B) Pays wages to such learners and apprentices at a rate of not less than eighty-five percent (85%) of the minimum wage rate established by Arkansas Code § 11-4-210(a).

Subpart 5. Employment of Workers with Disabilities

11 CAR § 11-501. Workers with disabilities.

A worker with a disability may be employed at a special minimum wage rate pursuant to Arkansas Code § 11-4-214, by obtaining ~~either~~ certification and authorization for such employment from either:

(1) The United States Department of Labor; or

(2) The Division of Labor of the Department of Labor and Licensing.

11 CAR § 11-502. Federal certification.

A worker with a disability may be employed at a special minimum wage rate pursuant to a special certificate issued for workers with disabilities by the United States Department of Labor pursuant to 29 C.F.R. pt. 525, provided the worker with a disability is actually paid as authorized by the United States Department of Labor.

11 CAR § 11-503. State certification.

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The Division of Labor of the Department of Labor and Licensing will issue a state certificate of authorization to employ a worker with a disability at a special minimum wage rate under the same terms and conditions as the United States Department of Labor and for such purpose the provisions of 29 C.F.R. pt. 525 (July 2018)⁷ are adopted by reference and incorporated herein.

Subpart 6. Coverage and Exemptions

11 CAR § 11-601. Employer coverage and exemption from minimum wage and overtime.

(a)(1) The Minimum Wage Act of the State of Arkansas, Arkansas Code § 11-4-201 et seq., defines “employer” to include “any individual, partnership, association, corporation, business trust, the stateState of Arkansas, any political subdivision of the state, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee.”⁷ See Arkansas Code § 11-4-203(4)(A).

(2) An entity, including an individual, partnership, association, corporation, business trust, governmental agency, or any person or group of persons, acts indirectly in the interest of an employer in relation to an employee when such entity or entities conduct related activities, either through unified operations or common control.

(3) Such related activities need not occur in the same establishment or facility.

(b)(1) The act defines “employer” to exclude any “individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee for any workweek in which fewer than four (4) employees are employed.”⁷ See Arkansas Code § 11-4-203(4)(B).

(2) Employees who are exempt from the act pursuant to Arkansas Code § 11-4-203(3) or 11 CAR § 11-602 shall be counted as employees for the purpose of determining whether an employer employs fewer than four (4) employees.

11 CAR § 11-602. Employee exemptions from minimum wage and overtime.

(a)(1) The Minimum Wage Act of the State of Arkansas, Arkansas Code § 11-4-201 et seq., does not apply to any individual employed in a bona fide executive, administrative, or professional capacity or as an outside commission-paid salesperson who customarily performs his or her services away from his or her employer's premises taking orders for goods or services; ~~Arkansas Code § 11-4-203(3)(A).~~

(2) For the purpose of defining and delimiting this exemption, the ~~Director of the Division of Labor~~Secretary of the Department of Labor and Licensing adopts by reference and incorporates herein 29 C.F.R. pt. 541 (July 1, 2005).

(3) For the purposes of this exemption, computer employees covered by 29 C.F.R. §§ 541.400 — 541.402 are hereby defined as "professional employees".

(4) For the purposes of this exemption, highly compensated employees covered by 29 C.F.R. § 541.601 are hereby defined as an executive, administrative, or professional employee if the employee customarily and regularly performs any one (1) or more of the exempt duties or responsibilities of an executive, administrative, or professional employee.

(5) For the purposes of this exemption, executive or administrative employee includes any individual who:

(A) Holds public elective office in this state;

(B) Is selected by the elected official to be a member of his or her personal staff and is directly supervised by the elected official;

(C) Is appointed by the elected official to serve on a policymaking level; or

(D) Is an immediate adviser to the elected official with respect to the constitutional or legal powers of his or her office.

(6) Notwithstanding the provisions of subdivision (a)(2) of this section, the salary level test of 29 C.F.R. § 541.100(a)(1) (executive employees), 29 C.F.R. § 541.200(a)(1) (administrative employees), 29 C.F.R. § 541.300(a)(1) (professional employees), and 29 C.F.R. § 541.400(b) (computer employees), as it applies to charitable and religious organizations; and employers who have gross annual sales of

less than five hundred thousand dollars (\$500,000) per year, shall be at a rate of at least ~~three three~~ hundred ~~sixty sixty~~ dollars (~~\$360360~~) per week on a salary or fee basis.

(7)(A) It is recognized that the primary duties of the following legislative employees require the employees to customarily and regularly perform tasks or work involving the exercise of discretion and independent judgment with respect to matters of significance in the course of assisting members of the General Assembly, and they are professional, executive, or administrative employees for the purpose of this exemption:

- (i) Legislative attorneys;
- (ii) Legislative auditors;
- (iii) Legislative editors; and
- (iv) Legislative analysts.

(B) Nothing in this provision limits the application of other exemptions to legislative employees.

(C) "Legislative employee" has the same meaning as defined by Arkansas Code § 10-2-129.

(b) The act ~~does~~shall not apply to:

~~(1) students~~Any student performing services for any school, college, or university in which they are enrolled and are regularly attending classes~~;~~ Arkansas Code § 11-4-203(3)(B)~~;~~

~~(c)(2) The act does not apply to any~~Any individual employed by the United States Government~~;~~ Arkansas Code § 11-4-203(3)(C)~~;~~

~~(d)(1)(3)(A) The act does not apply to any~~Any individual engaged in the activities of any educational, charitable, religious, or nonprofit organization ~~where-in~~where-in ~~which~~where-in the employer-employee relationship does not in fact exist or ~~where-in~~where-in the services are rendered to the organizations gratuitously~~;~~ Arkansas Code § 11-4-203(3)(D).

~~(2)(B)~~ This exemption does not apply to an individual performing services for an employer engaged in a for-profit enterprise in return, exchange, or in anticipation

of a donation or compensation to the educational, charitable, religious, or nonprofit organization.;

~~____(e)(1)(4)(A) The act does not apply to any~~ Any bona fide independent contractor.;

~~____(2)(B) The test for determining the employment~~ status of an individual as an employee or an independent contractor ~~involves shall be determined by~~ consideration of ~~twenty (20)the~~ factors, ~~specifically: required by the Empower Independent Contractors Act, Arkansas Code § 11-1-201 et seq.;~~

~~(A) A person for whom a service is performed has the right to require compliance with instructions, including without limitation when, where, and how a worker is to work;~~

~~(B) A worker is required to receive training, including without limitation through:~~

~~_____ (i) Working with an experienced employee;~~

~~_____ (ii) Corresponding with the person for whom a service is performed;~~

~~_____ (iii) Attending meetings; or~~

~~_____ (iv) Other training methods;~~

~~_____ (C) A worker's services are integrated into the business operation of the person for whom a service is performed and are provided in a way that shows the worker's services are subject to the direction and control of the person for whom a service is performed;~~

~~_____ (D) A worker's services are required to be performed personally, indicating an interest in the methods used and the results;~~

~~_____ (E) A person for whom a service is performed hires, supervises, or pays assistants;~~

~~_____ (F) A continuing relationship exists between a worker performing services and a person for whom a service is performed;~~

~~_____ (G) A worker performing a service has hours set by the person for whom a service is performed;~~

~~—————(H) A worker is required to devote substantially full time to the business of the person for whom a service is performed, indicating the person for whom a service is performed has control over the amount of time the worker spends working and by implication restricts the worker from obtaining other gainful work;~~

~~—————(I)(i) The work is performed on the premises of the person for whom a service is performed, or the person for whom a service is performed has control over where the work takes place.~~

~~—————(ii) A person for whom a service is performed has control over where the work takes place if the person has the right to:~~

~~—————(a) Compel the worker to travel a designated route;~~

~~—————(b) Compel the worker to canvass a territory within a certain time; or~~

~~—————(c) Require that the work be done at a specific place, especially if the work could be performed elsewhere;~~

~~—————(J) A worker is required to perform service in the order or sequence set by the person for whom a service is performed, or the person for whom a service is performed retains the right to set the order or sequence;~~

~~—————(K) A worker is required to submit regular oral or written reports to the person for whom a service is performed;~~

~~—————(L) A worker is paid by the hour, week, or month except when he or she is paid by the hour, week, or month only as a convenient way of paying a lump sum agreed upon as the cost of a job;~~

~~—————(M) A person for whom a service is performed pays the worker's business or traveling expenses;~~

~~—————(N) A person for whom a service is performed provides significant tools and materials to the worker performing services;~~

~~—————(O) A worker invests in the facilities used in performing the services;~~

~~—————(P) A worker realizes a profit or suffers a loss as a result of the services performed that is in addition to the profit or loss ordinarily realized by an employee;~~

~~_____ (Q) A worker performs more than de minimis services for more than one (1) person or firm at the same time, unless the persons or firms are part of the same service arrangement;~~

~~_____ (R) A worker makes his or her services available to the general public on a regular and consistent basis;~~

~~_____ (S) A person for whom a service is performed retains the right to discharge the worker; and~~

~~_____ (T) A worker has the right to terminate the relationship with the person for whom a service is performed at any time he or she wishes without incurring liability.~~

~~_____ (f)(5) The act does not apply to any~~Any individual employed by an agricultural employer who did not use more than five hundred (500) man-days of agricultural labor in any calendar quarter of the preceding calendar year. ~~Arkansas Code § 11-4-203(3)(F);~~

~~_____ (g)(6) The act does not apply to the~~ parent, spouse, child, or other member of an agricultural employer's immediate family. ~~Arkansas Code § 11-4-203(3)(G);~~

~~_____ (h)(7) The act does not apply to an~~An individual who:

~~_____ (1)(A) Is employed as a hand-harvest laborer and is paid on a piece-rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece-rate basis in the region of employment;~~

~~_____ (2)(B) Commutes daily from his or her permanent residence to the farm on which he or she is so employed; and~~

~~_____ (3)(C) Has been employed in agriculture fewer than thirteen (13) weeks during the preceding calendar year. Arkansas Code § 11-4-203(3)(H);~~

~~_____ (i)(8) The act does not apply to a~~A migrant ~~worker~~ who is:

~~_____ (1)(A) Sixteen (16) years of age or under and is employed as a hand-harvest laborer;~~

~~_____ (2)(B) Paid on a piece-rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece-rate basis in the region of employment;~~

~~_____ (3)(C) Employed on the same farm as his or her parent or parents; and~~

~~___(4)(D)~~ Paid the same piece-rate as employees over age sixteen (16) years are paid on the same farm; Arkansas Code § 11-4-203(3)(I);

~~___(j)(9)~~ The act does not apply to any Any employee principally engaged in the range production of livestock; Arkansas Code § 11-4-203(3)(J);

~~___(k)(10)~~ The act does not apply to any Any employee employed in planting or tending trees, cruising, surveying or felling timber, or in preparing or transporting logs or other forestry products to the mill, processing plants, or railroad or other transportation terminal if the number of employees employed by his or her employer in the forestry or lumbering operations does not exceed eight (8); Arkansas Code § 11-4-203(3)(K);

~~___(l)(11)~~ The act does not apply to any An employee employed by a nonprofit recreational or educational camp that does not operate for more than seven (7) months in any calendar year; Arkansas Code § 11-4-203(3)(L);

~~___(m)(12)~~ The act does not apply to an An employee of a nonprofit child welfare agency who serves as a houseparent who is:

~~___(1)(A)~~ Directly involved in caring for children who reside in residential facilities of the nonprofit child welfare agency and who are:

~~___(A)(i)~~ Orphans;

~~___(B)(ii)~~ In foster care;

~~___(C)(iii)~~ Abused;

~~___(D)(iv)~~ Neglected;

~~___(E)(v)~~ Abandoned;

~~___(F)(vi)~~ Homeless;

~~___(G)(vii)~~ In need of supervision; or

~~___(H)(viii)~~ Otherwise in crisis situations that lead to out-of-home placements; and

~~___(2)(B)~~ Compensated at an annual rate of not less than:

~~___(A)(i)~~ Thirteen thousand dollars (\$13,000); or

~~____(B)(ii)~~ Ten thousand dollars (\$10,000) if the employee resides in the residential facility and receives board and lodging at no cost; ~~Arkansas Code § 11-4-203(3)(M);~~

~~____(n)(1)(13)~~ The act shall not apply to any ~~An~~ employee employed in connection with the publication of any weekly, semiweekly, or daily newspaper with a circulation of less than four thousand (4,000), the major part of which circulation is within the county where published or counties contiguous thereto; ~~Arkansas Code § 11-4-203(3)(N).~~

~~____(2)~~ ~~See also~~ See also 29 U.S.C. § 213(a)(8);

~~____(o)(1)(14)(A)~~ The act shall not apply to any ~~An~~ employee employed on a casual basis in domestic service employment to provide:

~~____(A)(i)~~ ~~On a casual basis in domestic service employment to provide babysitting~~ Babysitting services; or

~~____(B)(i)(ii)~~ ~~In domestic service employment to provide companionship~~ Companionship services for individuals who ~~(because of age or infirmity)~~ are unable to care for themselves, because of age or infirmity. Arkansas Code § 11-4-203(3)(O).

~~____(ii)~~ ~~See also~~ See also 29 U.S.C. 213(a)(15).

~~____(2)(B)~~ For the purposes of defining these terms and in order to implement, administer, and enforce this exemption, the ~~director~~ secretary adopts by reference and incorporates herein 29 C.F.R. pt. 552;

~~____(p)(1)(15)~~ The act shall not apply to any ~~An~~ employee engaged in the delivery of newspapers to ~~the consumer~~ retail subscribers; ~~Arkansas Code § 11-4-203(3)(P).~~

~~____(2)~~ ~~See also~~ See also 29 U.S.C. 213(d);

~~____(q)(1)(16)~~ The act shall not apply to any ~~A~~ home worker engaged in the making of wreaths composed principally of natural holly, pine, cedar, or other evergreens (including the harvesting of the evergreens or other forest products used in making such wreaths); ~~Arkansas Code § 11-4-203(3)(Q).~~

~~____(2)~~ ~~See also~~ See also 29 U.S.C. 213(d);

~~____(r)(17)~~ An individual employed by an establishment that is an organized camp or a religious or nonprofit educational conference center if:

~~____(1)(A)~~ The organized camp or a religious or nonprofit education conference center does not operate for more than seven (7) months in a calendar year; or

~~____(2)(B)~~ During the preceding calendar year, the average receipts of the organized camp or a religious or nonprofit educational conference center for any six (6) months of the preceding calendar year were not more than thirty-three and one-third percent (33 1/3%) of the average receipts of the organized camp or a religious or nonprofit educational conference center for the other six (6) months of the preceding calendar year. ~~Arkansas Code § 11-4-203(3)(R);~~

~~____(18) A direct seller as defined in the Internal Revenue Code of 1986, 26 U.S.C. § 3508(b)(2), as it existed on January 1, 2021. Arkansas code 11-4-203(3)(S); or~~

~~____(19) An individual who:~~

~~____(A) Has entered into a contract to play baseball at the minor league level; and~~

~~____(B) Is compensated pursuant to the terms of a collective bargaining agreement that expressly provides for wages and working conditions. Arkansas Code § 11-4-203(3)(T).~~

11 CAR § 11-603. Employee exemptions from overtime only.

~~(a) The following employees are exempt from the~~ overtime provisions of Arkansas Code § 11-4-211(a) ~~do not apply to:~~

~~(1) Any agricultural employee ~~of an agricultural employer;~~~~

~~(2) Any~~ employee with respect to whom the United States Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to 49 U.S.C. § 31502;

~~(3) Employee-An employee of an employer engaged in the operation of a rail carrier subject to 49 U.S.C. part A of subtitle IV;~~

~~(4) Employee-An employee of a carrier by air subject to the provisions of Title II of the federal Railway Labor Act;~~

(5) ~~Individual~~An individual employed as an outside buyer of poultry, eggs, cream, or milk in their raw or natural state;

(6) ~~Employee~~An employee employed as a seaman;

(7) ~~Employee~~An employee employed as an announcer, news editor, or chief engineer by a radio or television station, the major studio of which is located in a city or town with a population of:

(A) One hundred thousand population (100,000) or less, according to the latest available decennial census figures as compiled by the United States Bureau of the Census, except where such city or town is part of a standard metropolitan statistical area, as defined and designated by the United States Office of Management and Budget, which has a total population in excess of one hundred thousand (100,000); or

(B) Twenty-five thousand (25,000) ~~population~~ or less which is part of such an area, but is at least forty (40) airline miles from the principal city in such an area;

(8) ~~Any~~ salesperson:

(A) Parts person, or mechanic primarily engaged in selling or servicing automobiles, trucks, or farm implements, if he or she is employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles or implements to the ultimate purchaser; or

(B) Primarily engaged in selling trailers, boats, or aircraft, if he or she is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to the ultimate purchaser;

(9) ~~Employee~~An employee employed as a driver or driver's helper making local deliveries, who is compensated for such employment on the basis of trip rates, or other delivery payment plan;

(10) ~~Employee~~An employee employed in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, or operated on a sharecrop basis, and which are used exclusively for supply and storing of water at least ninety percent (90%) of which was ultimately delivered for agricultural purposes during the preceding calendar year;

(11) ~~Employee~~ An employee employed in connection with livestock auction operations, provided such employee is primarily employed during the week by the same employer in agriculture and is paid for his or her employment in connection with such livestock auction operations at a rate not less than the minimum wage rate prescribed by Arkansas Code § 11-4-210(a);

(12) ~~Employee~~ An employee employed within the area of production by an establishment commonly recognized as a country elevator, including such an establishment which sells products and services used in the operation of a farm if no more than five (5) employees are employed in the establishment in such operations;

(13) ~~Employee~~ An employee engaged in the processing of maple sap into: _____
(A) sugar ~~(Sugar~~ other than refined sugar); _____; or
(B) syrup ~~Syrup~~;

(14) ~~Employee~~ An employee engaged in the:
(A) Transportation and preparation for transportation of fruits and vegetables, whether or not performed by the farmer, from the farm to a place of first processing, or first marketing within the state; or
(B) Transportation, whether or not performed by the farmer, between the farm and any point within the state of persons employed or to be employed in the harvesting of fruits or vegetables;

(15) ~~Driver~~ A driver employed by an employer engaged in the business of operating taxicabs;

(16) ~~Employee~~ An employee of a public agency who in any workweek is employed in fire protection activities, or any employee who in any workweek is employed in law enforcement activities, ~~(including~~ without limitation security personnel in correction institutions or jails), if the public agency employs during the workweek less than five (5) employees in fire protection or law enforcement activities, as the case may be;

(17) ~~Employee~~ An employee who is employed in domestic service in a household and who resides in such household;

(18) ~~Employee~~-An employee of an amusement or recreational establishment located in a national park or national forest or on land in the National Wildlife Refuge System if such employee:

(A) Is an employee of a private entity engaged in providing services or facilities in such location; and

(B) Receives compensation for employment in excess of fifty-six (56) hours in any workweek at a rate not less than one and one-half (1 1/2) times the regular rate at which he or she is employed; and

(19) ~~Criminal~~-A criminal investigator who is paid availability pay under 5 U.S.C. § 5545a.

11 CAR § 11-604. Partial overtime exemptions — Public agencies.

(a) In lieu of overtime compensation, Arkansas Code § 11-4-211(f) provides that the state or any political subdivision of the state may award compensatory time off at a rate of not less than one and one-half (1 1/2) hours for each hour of employment for which overtime compensation would otherwise be required.

(b) The compensatory time off may be provided only:

(1)(A) Pursuant to applicable provisions of a:

(i) Collective bargaining agreement;

(ii) Memorandum of understanding; or

(iii) Other agreement between the public agency and representatives of such employees; or

(B) In the case of an employee not covered by- subdivision (b)(1)(A) of this section, an agreement or understanding arrived at between the employer and the employee before the performance of the work; and

(2) If the employee has not terminated employment and has not accrued compensatory time in excess of the following:

(A) Four hundred eighty (480) hours for police, firefighters, emergency response personnel, and employees engaged in seasonal activities; or

(B) Two hundred forty (240) hours for any public employee not otherwise exempt or covered by subdivision (b)(2)(A) of this section.

(c) Arkansas Code § 11-4-211(e) provides that no public agency shall be deemed to have violated the overtime provisions of the Minimum Wage Act of the State of Arkansas, Arkansas Code § 11-4-201 et seq., with respect to the employment of any employee in fire protection activities or in law enforcement activities, including security personnel in correctional institutions, provided that the public agency pays overtime pay in compliance with 29 U.S.C. § 207(k).

(d) In order to implement, administer, and enforce the provisions of Arkansas Code § 11-4-211(f) and (g), as well as subsections (a) – (c) of this section, the ~~Director of the Division of Labor~~ Secretary of the Department of Labor and Licensing adopts by reference and incorporates herein 29 C.F.R. pt. 553, (July 1, 2018).

Subpart 7. Wage Payments

11 CAR § 11-701. Generally.

(a)(1) Payment of wages for minimum wage or overtime shall be made in currency, check drawn on an account with sufficient funds, or by electronic deposit into an employee's account in compliance with Arkansas Code § 11-4-402.

(2) Payment may also be made by providing a debit card preloaded with the wage payment in compliance with Arkansas Code § 11-4-403(f).

(3) If wages are paid by providing a preloaded debit card, at least one (1) free withdrawal shall be available for the funds for each deposit of wages loaded onto the debit card.

(b) Payment of wages shall be:

(1) ~~Shall be made~~ Made free and clear; and

(2) ~~Must be paid~~ Paid finally and unconditionally.

(c) Special rules apply for:

(1) Tipped employees whose employer takes a credit against the minimum wage;

(2) Employees who receive board, lodging, or other facilities for which an employer takes credit against the minimum wage; and

(3) Public employees who receive compensatory time off in lieu of overtime pursuant to this part and the Minimum Wage Act of the State of Arkansas, Arkansas Code § 11-4-201 et seq.

11 CAR § 11-702. Deductions from minimum wage.

(a) An employer may not make deductions from the minimum wage and overtime wages required by Arkansas Code §§ 11-4-210 and 14-2-211 except:

- (1) Those authorized by this part;
- (2) Deductions authorized or required by law; and
- (3) Deductions not otherwise prohibited which are:
 - (A) For the employee's benefit; and
 - (B) Authorized by the employee in writing.

(b) An employer may not make deductions from the applicable minimum wage rate for ~~such other~~ items, including but not limited to the following:

- (1) Spoilage or breakage;
- (2) Cash or inventory shortages or losses; and
- (3) Fines or penalties for:
 - (A) Lateness;
 - (B) Misconduct; or
 - (C) Quitting by an employee without notice.

11 CAR § 11-703. Payments to third persons.

(a) **Taxes.**

(1) Taxes which are assessed against the employee and which are collected by the employer and forwarded to the appropriate governmental agency are included as wages paid to the employee.

(2) No deduction may be made for any tax or share of a tax which the law requires to be borne by the employer.

(b) **Court order.** ~~Where-If~~ an employer is legally obliged by order of a court of competent jurisdiction to pay a sum for the benefit or credit of the employee to a creditor, trustee, or other third party, such as a wage garnishment, wage attachment, income withholding order for child support, or bankruptcy proceeding, payment to the third person is equivalent to payment to the employee, provided that neither the employer nor any person acting in his or her behalf or in his or her interest derives any profit or benefit from the transaction.

(c) **Wage assignments.**

(1) ~~Where-If~~ an employer is directed by a voluntary wage assignment or order of the employee to pay a sum for the benefit of the employee to a third party, payment to the third person is equivalent to payment to the employee, provided that neither the employer nor any person acting in his or her behalf or in his or her interest derives any profit or benefit from the transaction.

(2) This includes sums authorized by the employee in writing for such items as:

(A) United States savings bonds;

(B) Charitable contributions;

(C) Insurance premiums (~~paid to independent insurance companies where~~ ~~if~~ the employer is under no obligation to supply the insurance and derives, directly or indirectly, no benefit or profit from it); and

(D) Union dues.

11 CAR § 11-704. Allowance for board, lodging, apparel, or other items and services.

(a)(1) An employer of an employee engaged in an occupation in which board, lodging, apparel, or other items and services are customarily and regularly furnished to the employee for his or her benefit is entitled to an allowance against the minimum wage for the reasonable value of board, lodging, apparel, or other items and services in an amount not to exceed the fair and reasonable cost of the board, lodging, apparel, or other items and services.

(2) This allowance shall not be included in the wages for hours worked in excess of forty (40) hours per workweek.

(b)(1) Board, lodging, apparel, or other items and services are not furnished to the employee unless:

(A) The employee receives the benefit; and

(B) His or her acceptance is voluntary and uncoerced.

(2) For example, an allowance cannot be taken for meals not actually eaten.

(c) It does not matter whether the employer calculates the allowance as additions to or deductions from wages.

(d)(1) The determination of reasonable cost shall be based on 29 U.S.C. § 203(m), as it existed on January 1, 2019, and 29 C.F.R. § 531.

(2) "Reasonable cost" does not include a profit to the employer and is not more than the actual cost to the employer of the board, lodging, apparel, or other item or service.

(e)(1) The employer is not entitled to an allowance for the cost of board, lodging, apparel, or other items and services furnished to the employee, but primarily for the benefit of the employer.

(2) Apparel that has a company or business logo shall be considered primarily for the benefit of the employer.

(f)(1) The employer is not entitled to an allowance for the cost of board, lodging, apparel, or other items and services that are required by the employer as a condition of employment.

(2) For example, if an employer requires, as a condition of employment, that the employee reside on the employer's premises, a lodging allowance is unavailable to the employer.

11 CAR § 11-705. Tipped employees.

(a)(1) Every employer of an employee engaged in an occupation in which gratuities have been customarily and usually constituted, and have been recognized as a part of remuneration for hiring purposes, shall be entitled to an allowance for gratuities as part

of the hourly wage rate provided in Arkansas Code § 11-4-210 in an amount of no less than three dollars and sixty-two cents (\$3.62) per hour, provided that:

(A) The employee actually received that amount in gratuities; and

(B) The application of the gratuity allowance results in payment of wages other than gratuities to tipped employees, including full-time students subject to the provisions of Arkansas Code § 11-4-210(b), of no less than two dollars and sixty-three cents (\$2.63) per hour.

(2) For example, if the minimum wage rate is ten dollars (\$10.00) per hour, then the tip credit may be up to seven dollars and thirty-seven cents (\$7.37) per hour, and the minimum cash wage is two dollars and sixty-three cents (\$2.63) per hour.

(b) Conditions for taking the tip credit.

(1)(A) The tip credit is only available for those occupations in which tips have been customarily and usually recognized as part of the remuneration for hiring purposes.

(B) This includes waiters, waitresses, bellhops, beauty operators, and barbers, provided they actually receive and retain tips.

(C) For any other occupation, it will be customarily and usually recognized as part of the remuneration for hiring purposes if the employee actually receives tips in excess of twenty dollars (\$20.00) per month.

(2)(A) The tip credit may be taken only for hours worked by the employee in an occupation in which he or she qualifies as a tipped employee.

(B) Under employment agreements or practices requiring tips to be turned over or credited to the employer to be treated by him or her as part of his or her gross receipts, the employer must pay the employee the full minimum hourly wage rate because the employee is not a tipped employee.

(C) **Dual jobs.** Whenever an employee is required to work twenty (20) minutes or more in any occupation in which gratuities have not been recognized as part of the remuneration for hiring purposes, the rate for the entire hour shall be at least the applicable minimum wage rate without a tip credit.

(c) Payments which constitute tips.

(1)(A) A tip is a sum presented by a customer as a gift or gratuity in recognition of some service performed.

(B) It is to be distinguished from payment of a charge, if any, made for the service.

(C) A compulsory charge for service, such as ten percent (10%) of the amount of the bill, imposed on a customer by an employer's establishment, is not a tip and, even if distributed by the employer to his or her employees, cannot be counted as a tip.

(2)(A) In addition to cash, sums presented by customer which an employee keeps as his or her own, tips received by an employee include, within the meaning of the Minimum Wage Act of the State of Arkansas, Arkansas Code § 11-4-201 et seq.:

(i) Amounts paid by bank check or other negotiable instrument payable at par; and

(ii) Amounts transferred by the employer to the employee pursuant to direction from credit customers who designate amounts to be added to their bills as tips.

(B) Special gifts in forms other than money or its equivalent as above described, such as tickets, passes, or merchandise, are not counted as tips.

(3) Tip pooling.

(A) Where employees practice tip splitting, as where waiters give a portion of their tips to the bussers, both the amounts retained by the waiters and those given the bussers are considered tips of the individual employees who retain them.

(B) Similarly, where an accounting is made to an employer for his or her information only or in furtherance of a pooling arrangement whereby the employer redistributes the tips to the employees upon some basis to which they have mutually agreed among themselves, the amounts received and retained by each individual as his or her own are counted as his or her tips.

(d) The tip credit is in addition to any credit for board, lodging, apparel, or other items or services pursuant to:

(1) Arkansas Code § 11-4-213; and

(2) 11 CAR § 11-704.

(e) **Overtime payments.**

(1) When overtime is worked by a tipped employee, his or her regular rate of pay is determined by dividing his or her total remuneration for employment in any workweek by the total number of hours actually worked by him or her in that workweek.

(2) A tipped employee's regular rate of pay includes:

(A) The amount of tip credit taken by the employer;

(B) Any allowance taken by the employer for board, lodging, apparel, or other items and services as authorized by:

(i) Arkansas Code § 11-4-213; and

(ii) 11 CAR § 11-704; and

(C) The cash wages paid including commissions and certain bonuses or other payments paid by the employer.

(3) Any tips received by the employee in excess of the tip credit need not be included in the regular rate of pay for determining overtime payments.

(f) **Failure to maintain tip records.**

(1) It is the employer's obligation to maintain tip records as required by 11 CAR § 11-202(c) if the employer utilizes a tip credit or allowance.

(2) If the employer fails to maintain such records, the employer is not entitled to a tip credit or allowance against the minimum wage unless the employer can prove that the employee against whom a tip credit or allowance is sought actually received and retained each workweek tips in an amount equal to or greater than the tip credit or allowance claimed.

11 CAR § 11-706. Effect of collective bargaining agreements.

Allowances as part payment of the applicable minimum wage for gratuities, board, lodging, apparel, or other items and services shall not be permitted to the extent such deductions from cash wages are not permitted under the terms of a collective bargaining agreement applicable to an employee.

Subpart 8. Hours Worked

11 CAR § 11-801. Employees suffered or permitted to work.

(a)(1) Work not requested but suffered or permitted is work time.

(2) For example, an employee may voluntarily continue to work at the end of the shift.

(A) He or she may:

(i) Be a pieceworker;

(ii) Desire to finish an assigned task; or

(iii) Wish to correct errors, paste work tickets, or prepare time reports

or other records.

(B) The reason is immaterial.

(C) ~~The~~ If the employer knows or has reason to believe that ~~he or she~~ an employee is continuing to work, ~~then and~~ the time is working time.

(b)(1) This part is also applicable to work performed away from the premises or the job site, or even at home.

(2) If the employer knows or has reason to believe that the work is being performed, he or she must count the time as hours worked.

(c)(1) In all such cases, it is the duty of ~~the~~ management to:

(A) Exercise its control; and

(B) See-Ensure that the work is not performed if it does not want it to be performed.

(2) It cannot sit back and accept the benefits without compensating for them.

(3) The mere promulgation of a rule against such work is not ~~enough~~ sufficient.

(4) Management has the power to enforce the rule and must make every effort to do so.

11 CAR § 11-802. Waiting time.

(a) **Generally.**

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(1) Whether waiting time is time worked under the Minimum Wage Act of the State of Arkansas, Arkansas Code § 11-4-201 et seq., depends upon particular circumstances.

(2) The determination involves:

(A) A scrutiny and construction of the agreements between particular parties;

(B) Appraisal of their practical construction of the working agreement by conduct;

(C) Consideration of the nature of the service and its relation to the waiting time; and

(D) All of the circumstances.

(3) Facts may show that:

(A) The employee was engaged to wait; or

(B) He or she waited to be engaged.

(b) On duty.

(1) A stenographer who reads a book while waiting for dictation, a messenger who works a crossword puzzle while awaiting assignments, a firefighter who plays checkers while waiting for alarms, and a factory worker who talks to his or her fellow employees while waiting for machinery to be repaired are all working during their periods of inactivity.

(2) The rule also applies to employees who work away from the plant.

(3)(A) For example, a repair person is working while he or she waits for his or her employer's customer to get the premises in readiness.

(B) The time is work time even though the employee is allowed to leave the premises or the job site during such periods of inactivity.

(C) The periods during which these wait times occur are unpredictable.

(D) They Wait times are usually of short duration.

(E) In either event, the employee is unable to use the time effectively for his or her own purposes.

(F) It The time belongs to and is controlled by the employer.

(4) In all of these cases, waiting is an integral part of the job.

(5) ~~The~~ An employee who is engaged to wait shall be compensated for the wait time.

(c) **Off duty.**

(1) Periods during which an employee is completely relieved from duty and which are long enough to enable him or her to use the time effectively for his or her own purposes are not hours worked.

(2) He or she is not completely relieved from duty and cannot use the time effectively for his or her own purposes unless he or she is definitely told in advance that he or she:

(A) May leave the job; and

(B) Will not have to commence work until a definitely specified hour has arrived.

(3) Whether the time is long enough to enable him or her to use the time effectively for his or her own purposes depends upon all of the facts and circumstances of the case.

(d) **On-call time.**

(1) An employee who is required to remain on call on the employer's premises, or so close thereto that he or she cannot use the time effectively for his or her own purposes, is working while on call.

(2) An employee who is not required to remain on the employer's premises but is merely required to leave word at his or her home or with company officials where he or she may be reached is not working while on call.

11 CAR § 11-803. Rest and meal periods.

(a)(1) Rest periods of short duration, running from five (5) minutes to about twenty (20) minutes, are common in industry.

(2) They promote the efficiency of the employee and are customarily paid for as working time.

(3) They must be counted as hours worked.

(4) Compensable time of rest periods may not be offset against other working time such as compensable waiting time or on-call time.

(b) Bona fide meal periods are not worktime.

(1)(A) Bona fide meal periods do not include coffee breaks or time for snacks.

(B) These are rest periods.

(2) The employee must be completely relieved from duty for the purposes of eating regular meals.

(3)(A) Ordinarily, thirty (30) minutes or more is long enough for a bona fide meal period.

(B) A shorter period may be long enough under special conditions.

(4)(A) The employee is not relieved if he or she is required to perform any duties, whether active or inactive, while eating.

(B) For example, an office employee who is required to eat at his or her desk or a factory worker who is required to be at his or her machine, is working while eating.

(5) It is not necessary that an employee be permitted to leave the premises if he or she is otherwise completely freed from duties during the meal period.

11 CAR § 11-804. Sleeping time and certain other activities.

(a) Under certain conditions, an employee is considered to be working even though some of his or her time is spent in sleeping or in certain other activities.

(b) Less than twenty-four-hour duty.

(1) An employee who is required to be on duty for less than twenty-four (24) hours is working even though he or she is permitted to sleep or engage in other personal activities when not busy.

(2)(A) A telephone operator, for example, who is required to be on duty for specified hours, is working even though he or she is permitted to sleep when not busy answering calls.

(B) It makes no difference that he or she is furnished facilities for sleeping.

(C) His or her time is given to his or her employer.

(D) He or she is required to be on duty and the time is work time.

(c) Duty of twenty-four (24) hours or more.

(1)(A) ~~Where-If~~ an employee is required to be on duty for twenty-four (24) hours or more, the employer and the employee may agree to exclude bona fide meal periods and a bona fide regularly scheduled sleeping period of not more than eight (8) hours from hours worked, provided:

(i) Adequate sleeping facilities are furnished by the employer; and

(ii) The employee can usually enjoy an uninterrupted night's sleep.

(B) If the sleeping period is of more than eight (8) hours, only eight (8) hours will be credited.

(C) Where no expressed or implied agreement to the contrary is present, the eight (8) hours of sleeping time and lunch periods constitute hours worked.

(2) Interruptions of sleep.

(A) If the sleeping period is interrupted by a call to duty, the interruption must be counted as hours worked.

(B) If the period is interrupted to such an extent that the employee cannot get a reasonable night's sleep, the entire period must be counted.

(C) If the employee cannot get at least five (5) hours sleep during the scheduled period, the entire time is working time.

(d) Residing on the employer's premises or working at home.

(1) An employee who resides on his or her employer's premises on a permanent basis or for extended periods of time is not considered as working all the time he or she is on the premises.

(2) Ordinarily, he or she may engage in normal private pursuits and thus have enough time for eating, sleeping, entertaining, and other periods of complete freedom from all duties when he or she may leave the premises for purposes of his or her own.

(3) It is, of course, difficult to determine the exact hours worked under these circumstances and any reasonable agreement of the parties which takes into consideration all of the pertinent facts will be accepted.

(4) This rule would apply, for example, to the pumper of a stripper well who resides on the premises of his or her employer and also to a telephone operator who has the switchboard in his or her own home.

11 CAR § 11-805. Lectures, meetings, and training programs.

Attendance at lectures, meetings, training programs, and similar activities need not be counted as working time if the following four (4) criteria are met:

- (1) Attendance is outside of the employee's regular working hours;
- (2) Attendance is in fact voluntary;
- (3) The course, lecture, or meeting is not directly related to the employee's job; and
- (4) The employee does not perform any productive work during such attendance.

11 CAR § 11-806. Travel time.

(a) Home-to-work in an ordinary situation.

(1) An employee who travels from home before his or her regular workday and returns to his or her home at the end of the workday is engaged in ordinary home-to-work travel which is a normal incident of employment.

(2) This is true whether he or she works at a fixed location or at different job sites.

(3) Normal travel from home to work is not worktime.

(b) Home-to-work in emergency situations.

(1)(A) There may be instances when travel from home to work is overtime.

(B) For example, if an employee who has gone home after completing his or her day's work is subsequently called out at night to travel a substantial distance to perform an emergency job for the employer or one of ~~his or her~~the employer's customers, all time spent on such travel is working time.

(2) ~~The Division of Labor is taking no position on whether~~Whether travel to the job and back home by an employee who receives an emergency call outside of his or

her regular hours to report back to his or her regular place of business to do a job is working time depends on the facts of each case.

(c) Home-to-work on special one-day assignment in another city.

(1) A problem arises when an employee who regularly works at a fixed location in one (1) city is given a special one-day work assignment in another city.

(2)(A) For example, an employee who works in Washington, D.C., with regular working hours from 9:00 a.m. to 5:00 p.m. may be given a special assignment in New York City, with instructions to leave Washington, D.C. at 8:00 a.m.

(B) He or she arrives in New York at 12 noon, ready for work.

(C) The special assignment is completed at 3:00 p.m., and the employee arrives back in Washington, D.C. at 7:00 p.m.

(D) Such travel cannot be regarded as ordinary home-to-work travel occasioned merely by the fact of employment.

(E) It was performed for the employer's benefit and at his or her special request to meet the needs of the particular and unusual assignment.

(F) It would thus qualify as an integral part of the principal activity which the employee was hired to perform on the workday in question.

(G) It is like travel involved in an emergency call, described in 11 CAR § 11-806(b), or like travel that is all in the day's work (see 11 CAR § 11-806(d)).

(H) All the time involved, however, need not be counted.

(I) Since, except for the special assignment, the employee would have had to report to his or her regular work site, the travel between his or her home and the railroad depot may be deducted, it being in the home-to-work category.

(J) Also, of course, the usual meal time would be deductible.

(d) Travel that is all in the day's work.

(1) Time spent by an employee in travel as part of his or her principal activity, such as travel from job site to job site during the workday, must be counted as hours worked.

(2) Where an employee is required to report at a meeting place to receive instructions or to perform other work there, or to pick up and to carry tools, the travel

from the designated place to the work place is part of the day's work and must be counted as hours worked regardless of:

- (A) Contract;
- (B) Custom; or
- (C) Practice.

(3) If an employee normally finishes his or her work on the premises at 5:00 p.m. and is sent to another job which he or she finishes at 8:00 p.m. and is required to return to his or her employer's premises arriving at 9:00 p.m., all of the time is working time.

(4) However, if the employee goes home instead of returning to his or her employer's premises, the travel after 8:00 p.m. is home-to-work travel and is not hours worked.

(e) Travel away from home community.

(1) Travel that keeps an employee away from home overnight is travel away from home.

(2) Travel away from home is clearly work time when it cuts across the employee's workday.

(3) The employee is simply substituting travel for other duties.

(4) The time is not only hours worked on regular working days during normal working hours, but also during the corresponding hours on nonworking days.

(5) Thus, if an employee regularly works from 9:00 a.m. to 5:00 p.m. from Monday through Friday, the travel time during these hours is work time on Saturday and Sunday as well as on the other days.

(6) Regular meal period time is not counted.

(7) As an enforcement policy, the ~~division~~ Division of Labor of the Department of Labor and Licensing will not consider as work time that time spent in travel away from home outside of regular working hours as a passenger on an airplane, train, boat, bus, or automobile.

(f) When private automobile is used in travel away from home community. If an employee is offered public transportation but requests permission to drive his or her car instead, the employer may count as hours worked either:

- (1) The time spent driving the car; or
- (2) The time he or she would have had to count as hours worked during working hours if the employee had used the public conveyance.

(g) Work performed while traveling.

(1) Any work which an employee is required to perform while traveling must, of course, be counted as hours worked.

(2) An employee who drives a truck, bus, automobile, boat, or airplane, or an employee who is required to ride therein as an assistant or helper, is working while riding, except during bona fide meal periods or when he or she is permitted to sleep in adequate facilities furnished by the employer.

Subpart 9. Overtime Compensation

11 CAR § 11-901. Determining and calculating overtime pay.

For the purposes of determining and calculating overtime pay requirements and what constitutes an employee's regular rate of pay, the ~~Division of Labor~~Secretary of the Department of Labor and Licensing adopts and incorporates herein the provisions of 29 C.F.R. § 778 as applicable.

11 CAR § 11-902. Hospitals and residential care facilities.

Hospitals and residential care facilities shall be deemed in compliance with Arkansas Code § 11-4-211 provided they comply with the provisions for computing overtime pursuant to 29 U.S.C. § 207(j) and 29 C.F.R. § 778.601, which are adopted and incorporated herein.

11 CAR § 11-903. Local enterprise engaged in the wholesale or bulk distribution of petroleum products.

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An independently owned and controlled local enterprise engaged in the wholesale or bulk distribution of petroleum products shall be deemed in compliance with Arkansas Code § 11-4-211, provided it complies with the provisions of determining overtime pursuant to 29 U.S.C. § 207(b) and 29 C.F.R. §§ 794.101 – 794.144, which are adopted and incorporated herein.

11 CAR § 11-904. Employers subject to collective bargaining agreement covered by 29 U.S.C. § 207(b).

Employers subject to a collective bargaining agreement covered by 29 U.S.C. § 207(b) shall be deemed in compliance with Arkansas Code § 11-4-211, provided they comply with the provisions of determining overtime pursuant to 29 U.S.C. § 207(b) and 29 C.F.R. § 778.602, which are adopted and incorporated herein.

11 CAR § 11-905. Employment necessitating irregular hours of work.

Employers who pay overtime for work covered by the provisions of 29 U.S.C. § 207(f), shall be deemed in compliance with Arkansas Code § 11-4-211, provided they comply with the provisions of 29 U.S.C. § 207(f) and 29 C.F.R. §§ 778.402 – 778.421, which are adopted and incorporated herein.

11 CAR § 11-906. Employment at piece rates.

Employers who pay on a piece-rate basis for overtime pursuant to the provisions of 29 U.S.C. § 207(g), shall be deemed in compliance with Arkansas Code § 11-4-211 provided they comply with the provisions of 29 U.S.C. § 207(g) and 29 C.F.R. pt. 548, which are adopted and incorporated herein.

11 CAR § 11-907. Retail or service establishment whose employees are compensated principally by commissions.

Retail or service establishments whose employees are compensated principally by commissions shall be deemed in compliance with Arkansas Code § 11-4-211, provided

they comply with the provisions of 29 U.S.C. § 207(i) and 29 C.F.R. §§ 779.410 – 779.421, which are adopted and incorporated herein.

Subpart 10. Joint Employment

11 CAR § 11-1001. Joint employment.

(a)(1) A single individual may stand in the relation of an employee to two (2) or more employers at the same time since there is nothing in the Minimum Wage Act of the State of Arkansas, Arkansas Code § 11-4-201 et seq., which prevents an individual employed by one (1) employer from also entering into an employment relationship with a different employer.

(2) A determination of whether the employment by the employers is to be considered joint employment or separate and distinct employment for purposes of the act depends upon all the facts in the particular case.

(3) If all the relevant facts establish that two (2) or more employers are acting entirely independently of each other and are completely disassociated with respect to the employment of a particular employee, who during the same workweek performs work for more than one (1) employer, each employer may disregard all work performed by the employee for the other employer or employers in determining his or her own responsibilities under the act.

(4)(A) On the other hand, if the facts establish that the employee is employed jointly by two (2) or more employers, i.e., that employment by one (1) employer is not completely disassociated from employment by the other employer or employers, all of the employee's work for all of the joint employers during the workweek is considered as one (1) employment for purposes of the act.

(B) In this event, all joint employers are responsible, both individually and jointly, for compliance with all of the applicable provisions of the act, including the overtime provisions, with respect to the entire employment for the particular workweek.

(C) In discharging the joint obligation each employer may, of course, take credit toward minimum wage and overtime requirements for all payments made to the employee by the other joint employer or employers.

(b) Where the employee performs work which simultaneously benefits two (2) or more employers, or works for two (2) or more employers at different times during the workweek, a joint employment relationship generally will be considered to exist in situations such as:

(1) ~~Where there is~~If an arrangement exists between the employers to share the employee's services, as, for example, to interchange employees;

(2) ~~Where~~If one (1) employer is acting directly or indirectly in the interest of the other employer or employers in relation to the employee; or

(3) ~~Where~~If the employers are not completely disassociated with respect to the employment of a particular employee and may be deemed to share control of the employee, directly or indirectly, by reason of the fact that one (1) employer controls, is controlled by, or is under common control with the other employer.

Subpart 11. Enforcement

11 CAR § 11-1101. Employee claims – Assessment period – Procedures – Remedies.

(a)(1) An employee may file a claim with the ~~Director of the~~Division of Labor of the Department of Labor and Licensing charging that an employer has violated Arkansas Code § 11-4-210 or § 11-4-211 with respect to minimum wage and overtime as to the complaining employee or other person.

(2) Such claim shall be on a form or process approved by the ~~Division of Labor~~division.

(b) The division shall promptly investigate each claim and at the conclusion of such investigation shall issue a:

(1) Notice of assessment pursuant to 11 CAR § 11-1102; or

(2) A letter advising the employer and the employee that no violation was found.

(c) The assessment period shall be for the two (2) years preceding the filing of the claim but may be extended through the date the division issues a notice of assessment if the division determines a violation of the Minimum Wage Act of the State of Arkansas, Arkansas Code § 11-4-201 et seq., or any other law or rule the division or the Secretary of the Department of Labor and Licensing may enforce hindered the division's investigation.

(d)(1) The filing of a claim with the division tolls the statute of limitations of the secretary or the division to file suit to enforce a final adjudication under this part until the entry of a final order adjudicating the claim.

(2) A legal action by the secretary or the division to recover wages, liquidated damages, or civil penalties or otherwise enforce a final adjudication under this part shall be commenced within one (1) year of the entry of the final order adjudicating the claim.

(e) If a violation of the act, this part, or any other law or rule the secretary or division may enforce prevents the division from discovering a valid claim for compensation of an employee, the employee may be joined in the administrative proceeding at any reasonable time before the administrative hearing or a separate notice of assessment may be issued on behalf of the employee.

~~(e)~~(f)(1) The name of any employee identified in a claim shall be kept confidential until the ~~director~~division issues a notice of assessment.

(2) The notice of assessment is an administrative complaint within the meaning of Arkansas Code § 11-4-220.

11 CAR § 11-1102. Notice of assessment.

(a) Whenever the ~~Manager of the Division of Labor of the Department of Labor and Licensing Standards Section~~ determines that there has been a violation of the Minimum Wage Act of the State of Arkansas, Arkansas Code § 11-4-201 et seq., or this part, the ~~manager~~division shall issue a notice of assessment, which shall include the following:

(1) The dates of any violations;

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- (2) The statute or rule violated;
- (3) The amount of any back wages assessed;
- (4) The amount of any civil money penalty assessed and the reasons for such a penalty;
- (5) The amount of any liquidated damages assessed and the reasons for such an assessment;
- (6) The names of any employees on whose behalf back wages are assessed;
- (7) A statement of how to contest the assessment and obtain an administrative hearing; and
- (8) A statement that the failure to contest the assessment will result in the ~~manager's division's~~ decision becoming the final administrative determination.

(b) A notice of assessment may be issued as a result of investigations initiated by a claim filed by an employee, as well as a result of investigations initiated by the ~~Division of Labor~~ division.

(c)(1) A notice of assessment shall be delivered to the employer by certified and first class mail.

(2) ~~Where service by certified mail is not accepted or unclaimed by the party, notice~~ Notice shall be deemed received on the date of attempted delivery unless both the certified and first class mail are returned as not delivered.

(3) ~~Where~~ If both certified and first class mail service is ~~not accepted or unclaimed~~ returned as not delivered, the ~~manager division~~ may ~~exercise discretion to~~ serve the notice of assessment by ~~regular mail~~:

(A) Any manner authorized by the Arkansas Rules of Civil Procedure for service of a summons or subpoena; or

(B) Hand-delivery by an investigator of the division.

11 CAR § 11-1103. Civil money penalties.

(a) The ~~Manager of the Division of Labor of the Department of Labor and Licensing Standards Section~~ may issue a civil money penalty for ~~the following~~ any violation of the act or this part, including without limitation:

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(1) Willfully hindering or delaying an investigation under the Minimum Wage Act of the State of Arkansas, Arkansas Code § 11-4-201 et seq., or this part, or willfully hindering or delaying any representative of the ~~Director of the Division of Labor~~division in the performance of his or her duties in the enforcement of the act or this part;

(2) Willfully failing to make, keep, or preserve any record required by the act or this part or willfully falsifying such records;

(3) Willfully refusing to make any record accessible to the ~~Division of Labor~~division upon demand or willfully refusing to furnish a sworn statement of the record or any other information required for the proper enforcement of the act and this part;

(4) Willfully failing to post a summary of the law as required by Arkansas Code § 11-4-216;

(5) Paying or agreeing to pay wages at a rate less than required by the act;

(6) Otherwise willfully violating any provision of the act or any rule issued thereunder; and

(7) Willfully discharging or in any other manner willfully discriminating against any employee because the employee has:

(A) Made a complaint to his or her employer or to the ~~director~~divisioner ~~his or her authorized representative~~ regarding compliance with the act or this part;

(B) Instituted or is about to institute any proceeding under or related to this act; or

(C) Testified or is about to testify in any proceeding under or related to this act.

(b)(1) The amount of any civil money penalty shall be ~~between not less than~~ fifty dollars (\$50.00) and ~~not more than~~ one thousand dollars (\$1,000) for each violation.

(2) Each violation shall constitute a separate offense.

(3) For ~~the~~ purposes of ~~subdivision-subsection~~ (a)(~~7~~) of this section, each day the violation continues shall constitute a separate offense.

(c)(1) In determining the amount of a civil penalty, the ~~manager-division~~ shall consider the appropriateness of the penalty to the size of the business and the gravity of the violation.

(2) Matters which indicate that the gravity of the matter justifies maximum civil penalty assessments ~~are~~include without limitation:

- (A) Multiplicity of violations;
- (B) Recurring violations;
- (C) Falsification ~~and/or~~ concealment of information or records; ~~and/or~~
- (D) Failure to assure future compliance.

(3) The size of the business includes the number of employees and the gross volume of sales.

~~(d) Assessment of a civil money penalty shall be made no later than two (2) years from the date of the occurrence of the violation.~~

11 CAR § 11-1104. Liquidated damages.

(a) The ~~Manager of the Division of Labor of the Department of Labor and Licensing Standards Section~~ may assess liquidated damages to be paid an employee in an amount up to but not greater than the back wages assessed on behalf of the employee.

(b) Liquidated damages shall be assessed only for willful violations of the Minimum Wage Act of the State of Arkansas, Arkansas Code § 11-4-201 et seq., or this part.

11 CAR § 11-1105. Contesting an assessment.

(a) An employer may contest an assessment made by the ~~Manager of the Division of Labor of the Department of Labor and Licensing Standards Section~~ by filing a written request for a hearing with the:

~~Director of the Department of Labor and Licensing~~

~~Attention:~~ Division of Labor

900 West Capitol, Suite 400

(b) ~~The Unless extended for good cause by the division, the~~ written request ~~must~~ shall be made within fifteen (15) days after the employer's receipt of the notice of assessment or the assessment ~~will become~~ shall be final.

(c) A written request for a hearing shall be referred to a hearing officer designated by the ~~Director of the Division of Labor~~ division and shall be handled as an adjudicative matter pursuant to 11 CAR § 10-107.

Subpart 12. Interpretation and Application of Rules

11 CAR § 11-1201. Reliance on federal interpretations and precedent.

The Division of Labor of the Department of Labor and Licensing may rely on the interpretations of the United States Department of Labor and federal precedent established under the Fair Labor Standards Act, 29 U.S.C. § 201 et seq., in interpreting and applying the provisions of the Minimum Wage Act of the State of Arkansas, Arkansas Code § 11-4-201 et seq., and this part, except to the extent a different interpretation is clearly required.

DO NOT CODIFY. Subpart 13. Repealer, Severability, and Effective Date

~~11 CAR § 11-1301~~ DO NOT CODIFY. Severability and precedence.

(a) All previous rules of the Division of Labor of the Department of Labor and Licensing regarding the Minimum Wage Act of the State of Arkansas, Arkansas Code § 11-4-201 et seq., are hereby repealed.

(b) If any provisions of this part or their application to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications which can be given affect without the invalid provision or application, and to this end the provisions of this part are declared to be severable.

1 State of Arkansas
2 95th General Assembly
3 Regular Session, 2025
4

A Bill

SENATE BILL 279

5 By: Senator Irvin
6 By: Representative Wooldridge
7

For An Act To Be Entitled

8
9 AN ACT TO AMEND THE MINIMUM WAGE ACT OF THE STATE OF
10 ARKANSAS; TO ASSIST THE DIVISION OF LABOR WITH
11 ENFORCING THE FAIR AND PROMPT PAYMENT OF WAGES TO
12 ARKANSAS CITIZENS; TO CLARIFY THE MANNER IN WHICH
13 WAGE AND HOUR COMPLAINTS ARE INVESTIGATED; AND FOR
14 OTHER PURPOSES.
15

Subtitle

16
17
18 TO ASSIST THE DIVISION OF LABOR WITH
19 ENFORCING THE FAIR AND PROMPT PAYMENT OF
20 WAGES TO ARKANSAS CITIZENS; AND TO
21 CLARIFY THE MANNER IN WHICH WAGE AND
22 HOUR COMPLAINTS ARE INVESTIGATED.
23

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
25

26 SECTION 1. Arkansas Code § 11-4-218(d)(1), concerning wage and hour
27 investigations by the Director of the Division of Labor, is amended to read
28 as follows:

29 (d)(1) The Director of the Division of Labor shall have the authority
30 to ~~fully~~:

31 (A) Fully enforce this subchapter by instituting legal
32 action to recover any wages that he or she determines to be due to employees
33 under this subchapter; and

34 (B)(i) Investigate all complaints filed with the Division
35 of Labor for unpaid wages to determine if this subchapter has been violated.

36 (ii) The assessment period shall be for the two (2)



1 years preceding the filing of the complaint but may be extended through the
2 date the director issues a notice of assessment if the director determines a
3 violation of this subchapter or any other law or rule the director may
4 enforce hindered the director's investigation.

5 (iii)(a) The filing of a complaint with the director
6 tolls the director's statute of limitations until the entry of a final order
7 adjudicating the claim.

8 (b) Notwithstanding subsection (g) of this
9 section, a legal action by the director to recover wages, liquidated damages,
10 or civil penalties shall be commenced within one (1) year of the entry of the
11 final order adjudicating the claim.

12 (iv) If a violation of this subchapter or any other
13 law or rule the director may enforce prevents the director from discovering a
14 valid claim for compensation of an employee, the employee may be joined in
15 the administrative proceeding at any reasonable time before the
16 administrative hearing or a separate notice of assessment may be issued on
17 behalf of the employee.

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20 **APPROVED: 3/25/25**
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1 State of Arkansas As Engrossed: S3/17/25 S3/20/25 S4/1/25

2 95th General Assembly

A Bill

3 Regular Session, 2025

SENATE BILL 439

4

5 By: Senator Irvin

6 By: Representative L. Johnson

7

8

For An Act To Be Entitled

9 AN ACT TO AMEND THE DUTIES OF THE SECRETARY OF THE
10 DEPARTMENT OF LABOR AND LICENSING; TO AMEND PORTIONS
11 OF ARKANSAS CODE WHICH RESULTED FROM INITIATED ACT 1
12 OF 1914; AND FOR OTHER PURPOSES.

13

14

15

Subtitle

16

17 TO AMEND THE DUTIES OF THE SECRETARY OF
18 THE DEPARTMENT OF LABOR AND LICENSING;
19 AND TO AMEND PORTIONS OF ARKANSAS CODE
20 WHICH RESULTED FROM INITIATED ACT 1 OF
21 1914.

21

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

23

24 SECTION 1. Arkansas Code § 8-7-1004(1), concerning the duties of
25 public employees under the Public Employees' Chemical Right to Know Act, is
26 amended to read as follows:

27

28 (1) Post adequate notice, as provided by the ~~Director of the~~
~~Division of Labor~~ Department of Labor and Licensing, at locations where
29 notices are normally posted, informing public employees about their rights
30 under this subchapter;

31

32 SECTION 2. Arkansas Code § 8-7-1006(e), concerning material safety
33 data sheets under the Public Employees' Chemical Right to Know Act, is
34 amended to read as follows:

35

36 (e) A public employer, chemical manufacturer, or distributor shall
provide a copy of a material safety data sheet to the ~~Director of the~~



1 ~~Division of Labor~~ Department of Labor and Licensing upon request.

2

3 SECTION 3. Arkansas Code § 8-7-1007(b), concerning workplace chemical
4 lists under the Public Employees' Chemical Right to Know Act, is amended to
5 read as follows:

6 (b) Each public employer shall update the workplace chemical list with
7 the ~~Director of the Division of Labor~~ Department of Labor and Licensing as
8 necessary, but in any case by July 1 of each year.

9

10 SECTION 4. Arkansas Code § 8-7-1008(b)(1), concerning employee
11 information and training under the Public Employees' Chemical Right to Know
12 Act, is amended to read as follows:

13 (b)(1) The information and training program provided pursuant to this
14 section shall be developed in accordance with rules to be promulgated by the
15 ~~Director of the Division of Labor~~ Department of Labor and Licensing pursuant
16 to § 8-7-1011.

17

18 SECTION 5. Arkansas Code § 8-7-1008(e) and (f), concerning employee
19 information and training under the Public Employees' Chemical Right to Know
20 Act, are amended to read as follows:

21 (e) The information and training program required under this section
22 may be conducted with the assistance of the ~~director~~ department pursuant to §
23 8-7-1009.

24 (f) The ~~director~~ department shall have authority to promulgate rules
25 in accordance with § 8-7-1011:

26 (1) To exempt public employers from providing the information
27 and training otherwise required by this section to public employees with
28 special skills and knowledge concerning hazardous chemicals, if such special
29 skills and knowledge would make the information and training unnecessary; and

30 (2) To require public employers to provide refresher training
31 for public employees in workplaces or in circumstances in which the ~~director~~
32 department reasonably determines such refresher training to be necessary and
33 appropriate.

34

35 SECTION 6. Arkansas Code § 8-7-1009 is amended to read as follows:

36 8-7-1009. Outreach activities ~~of the director~~.

1 (a) The ~~Director of the Division of Labor~~ Secretary of the Department
2 of Labor and Licensing or his or her designee shall develop and give each
3 public employer a suitable form of notice providing public employees with
4 information regarding their rights under this subchapter.

5 (b) The ~~director~~ secretary or his or her designee shall develop and
6 maintain a general information and training assistance program to aid public
7 employers. The general information and training assistance program shall be
8 made available to all public employers. As part of the general information
9 and training assistance program, the ~~director~~ secretary or his or her
10 designee may develop and distribute a supply of informational leaflets on
11 public employers' duties, public employees' rights, and the effects of
12 hazardous chemicals.

13 (c) The ~~director~~ secretary or his or her designee may contract with
14 state universities or other public or private organizations to develop and
15 implement the outreach program.

16
17 SECTION 7. Arkansas Code § 8-7-1010(b), concerning rights of public
18 employees under the Public Employees' Chemical Right to Know Act, is amended
19 to read as follows:

20 (b) No public employer shall discharge or cause to be discharged or
21 otherwise discipline or discriminate against a public employee because the
22 public employee has requested information, filed a complaint, assisted an
23 inspector of the ~~Director of the Division of Labor~~ Department of Labor and
24 Licensing, or instituted or caused to be instituted any complaint or
25 proceeding under or related to this subchapter or has testified or is about
26 to testify in any such proceeding or has exercised any rights afforded by
27 this subchapter on behalf of the public employee or other public employees,
28 nor shall any pay, position, seniority, or other benefits to which the public
29 employee may be entitled be lost because the public employee exercised rights
30 afforded by this subchapter.

31
32 SECTION 8. Arkansas Code § 8-7-1011 is amended to read as follows:

33 8-7-1011. Rulemaking.

34 (a) The ~~Director of the Division of Labor~~ Secretary of the Department
35 of Labor and Licensing or his or her designee may promulgate rules in
36 accordance with the provisions of §§ 11-2-110, 11-2-112, and 11-2-113 to

1 implement the provisions of this subchapter. This authority shall include,
2 but not be limited to, the authority to implement changes corresponding to
3 future amendments to the Hazard Communication Standard to maintain
4 consistency between this subchapter and the Hazard Communication Standard.

5 (b) The ~~director~~ secretary or his or her designee shall promulgate
6 rules requiring public employers to carry out information and training
7 programs for their public employees and specifying the minimum content of
8 education and training programs as provided in § 8-7-1008.

9
10 SECTION 9. Arkansas Code § 8-7-1012(a)(4), concerning trade secrets
11 under the Public Employees' Chemical Right to Know Act, is amended to read as
12 follows:

13 (4) The specific chemical identity is made available to health
14 professionals, employees, and their designated representatives under the same
15 conditions as are set out in the Hazard Communication Standard, 29 C.F.R. §
16 1910.1200(i)(2)-(7), provided, the information disclosable to the United
17 States Occupational Safety and Health Administration under the Hazard
18 Communication Standard shall also be disclosable to the ~~Director of the~~
19 ~~Division of Labor~~ Secretary of the Department of Labor and Licensing or his
20 or her designee.

21
22 SECTION 10. Arkansas Code § 8-7-1012(b), concerning trade secrets
23 under the Public Employees' Chemical Right to Know Act, is amended to read as
24 follows:

25 (b) The ~~director~~ secretary or his or her designee, upon his or her
26 initiative or upon request by a public employee, designated representative,
27 or public employer, shall request any or all of the data substantiating the
28 trade secret claim to determine whether the claim is valid. The ~~director~~
29 secretary or his or her designee shall protect from disclosure all
30 information coming into his or her possession that is marked as confidential
31 and shall return all information so marked at the conclusion of his or her
32 determination.

33
34 SECTION 11. Arkansas Code § 8-7-1013 is amended to read as follows:

35 8-7-1013. Complaints and investigations.

36 (a) Complaints received orally or in writing from public employees,

1 their designated representatives, or public employers related to alleged
2 violations of this subchapter shall be investigated in a timely manner by the
3 ~~Director of the Division of Labor~~ Secretary of the Department of Labor and
4 Licensing or his or her designee.

5 (b) Officers or duly designated representatives of the ~~director~~
6 secretary shall have the right of entry into any workplace or work area of a
7 public employer during normal business hours to inspect and investigate
8 complaints within reasonable limits and in a reasonable manner.

9 (c) The ~~director~~ secretary or his or her designee shall have the same
10 powers, duties, and authority to administer and enforce the provisions of
11 this subchapter as are contained in §§ 11-2-108, 11-2-115, 11-2-116, and 11-
12 2-118. Provided, however, that if there is a conflict between the provisions
13 of this subchapter and the provisions of §§ 11-2-108, 11-2-115, 11-2-116, and
14 11-2-118, the provisions of this subchapter shall prevail.

15
16 SECTION 12. Arkansas Code § 8-7-1014 is amended to read as follows:
17 8-7-1014. Enforcement.

18 (a) If the ~~Director of the Division of Labor~~ Secretary of the
19 Department of Labor and Licensing or his or her designee determines that a
20 public employer has violated a provision of this subchapter, the ~~director~~
21 secretary or his or her designee shall issue an order to the official
22 responsible for performing the duties required by this subchapter directing
23 that official to cease and desist the act or omission constituting the
24 violation. Such an order shall constitute prima facie evidence of a violation
25 in any enforcement action filed pursuant to § 8-7-1015.

26 (b) If the ~~director~~ secretary or his or her designee determines that a
27 public employer has violated § 8-7-1008 relating to public employee
28 information and training and within sixty (60) days of issuance of a cease
29 and desist order the public employer has not remedied the violation, the
30 ~~director~~ secretary or his or her designee may conduct a program or programs
31 to remedy the violation and require such public employer to reimburse the
32 ~~director~~ secretary or his or her designee for the cost of doing so.

33 (c) Violation of this subchapter by a public employer shall be cause
34 for adverse personnel action against the supervisor or supervisors
35 responsible for the violation, including, but not limited to, suspension,
36 demotion, withholding of annual career service recognition payments, or, in

1 the case of serious and repeated violations, termination. Issuance of a cease
2 and desist order by the ~~director~~ secretary or his or her designee shall not
3 be a prerequisite for such adverse personnel action, but such action shall
4 only be taken in accordance with the civil service laws and rules.

5
6 SECTION 13. Arkansas Code § 8-7-1015(a), concerning a cause of action
7 under the Public Employees' Chemical Right to Know Act, is amended to read as
8 follows:

9 (a) Any citizen denied the rights granted to him or her by this
10 subchapter may commence a civil action against a public employer or
11 responsible official of a public employer in the Pulaski County Circuit Court
12 or the circuit court of the residence of the aggrieved party, if an agency of
13 the state is involved, or any of the circuit courts of the appropriate
14 judicial districts when any other public employer is involved. Issuance of a
15 cease and desist order by the ~~Director of the Division of Labor~~ Secretary of
16 the Department of Labor and Licensing or his or her designee shall not be a
17 prerequisite to the commencement of such an action.

18
19 SECTION 14. Arkansas Code § 11-2-104(a), concerning penalties related
20 to the Division of Labor, is amended to read as follows:

21 (a) Any employer or owner who violates or fails or refuses to comply
22 with any provision of this subchapter, any lawful order of the ~~Director of~~
23 ~~the Division of Labor~~ Secretary of the Department of Labor and Licensing or
24 his or her designee, or any judgment or decree made by any court in
25 connection with the provisions of this subchapter for which no penalty has
26 been otherwise provided shall be guilty of a ~~misdemeanor~~ violation.

27
28 SECTION 15. Arkansas Code § 11-2-105(a), concerning enforcement
29 related to the Division of Labor, is amended to read as follows:

30 (a)(1) It shall be the duty of the Attorney General and the several
31 prosecuting attorneys, upon request of the ~~Director of the Division of Labor~~
32 Secretary of the Department of Labor and Licensing or his or her designee, or
33 any of his or her authorized representatives, to prosecute any violation of
34 the law that is the duty of the ~~director~~ secretary or his or her designee to
35 enforce.

36 (2) The ~~director~~ secretary or his or her designee may, upon his

1 or her own motion, bring all necessary suits and institute such prosecutions
2 as may be necessary to properly enforce this subchapter, and he or she shall
3 not be required to give bond for cost or make appeal bonds.

4
5 SECTION 16. Arkansas Code § 11-2-107 is repealed.

6 ~~11-2-107. Appointment of director.~~

7 ~~(a) The Governor shall appoint the Director of the Division of Labor,~~
8 ~~subject to confirmation by the Senate.~~

9 ~~(b)(1) The director shall serve at the pleasure of the Governor.~~

10 ~~(2) The director shall report to the Secretary of the Department~~
11 ~~of Labor and Licensing.~~

12 ~~(3) The director shall be a person who, on account of his or her~~
13 ~~previous vocation, employment, or affiliation can be classed as a~~
14 ~~representative of employees.~~

15 ~~(c) The director shall give a bond in the sum of two thousand dollars~~
16 ~~(\$2,000) with sureties to be approved by the Secretary of the Department of~~
17 ~~Labor and Licensing, conditioned for the faithful discharge of the duties of~~
18 ~~his or her office.~~

19 ~~(d) The director shall also take the oath of office prescribed by the~~
20 ~~Arkansas Constitution.~~

21 ~~(e) The director shall provide himself or herself with a suitable~~
22 ~~seal, which shall be judicially noticed.~~

23
24 SECTION 17. Arkansas Code § 11-2-108 is amended to read as follows:

25 11-2-108. ~~Director~~— Powers and duties generally.

26 In addition to such other duties and powers as may be conferred upon
27 him or her by law, the ~~Director of the Division of Labor~~ Secretary of the
28 Department of Labor and Licensing or his or her designee shall have the
29 power, jurisdiction, and authority:

30 (1) To enforce all labor laws in the State of Arkansas, the
31 enforcement of which is not otherwise specifically provided for;

32 (2) To administer and enforce all laws, rules, and regulations
33 that are the duty of the ~~Division of Labor~~ Department of Labor and Licensing
34 to administer and enforce;

35 (3) To direct, except as otherwise provided, make, or cause to
36 be made all necessary inspections to see that all laws and rules made

1 pursuant thereto that the division has the duty, power, and authority to
2 enforce are promptly and effectively carried out; and

3 (4) To make investigations, collect and compile statistical
4 information, and report upon conditions of labor generally and upon all
5 matters relating to the enforcement and effect of the provisions of this
6 subchapter and of the rules issued under this subchapter.

7

8 SECTION 18. Arkansas Code § 11-2-109 is amended to read as follows:

9 11-2-109. ~~Director~~— Intervention in and arbitration of labor
10 disputes.

11 (a) In addition to such other duties and powers as may be conferred
12 upon him or her by law, the ~~Director of the Division of Labor~~ Secretary of
13 the Department of Labor and Licensing or his or her designee shall have the
14 power, jurisdiction, and authority:

15 (1)(A) To intervene or authorize his or her representative to
16 intervene in any labor dispute in a strictly conciliatory or mediatory
17 capacity whenever he or she is extended a written invitation to do so by
18 either party to the controversy.

19 (B) However, the Division of Labor may proffer its
20 services to both parties when a work stoppage is threatened and neither party
21 requests intervention;

22 (2) To do all in his or her power to promote the voluntary
23 arbitration of disputes between employers and employees and to avoid the
24 necessity of resorting to lockouts, boycotts, blacklists, discriminations,
25 and legal proceedings in matters of employment.

26 (b)(1) In pursuance of his or her duty, whenever both sides to any
27 controversy agree to voluntary arbitration, the ~~director~~ secretary or his or
28 her designee may appoint temporary boards of arbitration, prescribe rules of
29 procedure for the arbitration boards, conduct investigations and hearings,
30 publish reports and advertisements, and do all things convenient and
31 necessary to accomplish the purposes of this subchapter.

32 (2) Members of the boards of arbitration may receive expense
33 reimbursement in accordance with § 25-16-901 et seq.

34 (c)(1) The Secretary of the Department of Labor and Licensing may
35 designate an employee of the division to act as chief mediator and may detail
36 other employees or persons not in the division from time to time to act as

1 his or her assistants for the purpose of executing these provisions.

2 (2) Employees of the division shall serve on temporary boards
3 without extra compensation.

4
5 SECTION 19. Arkansas Code § 11-2-110 is amended to read as follows:

6 11-2-110. ~~Director~~— Rulemaking authority.

7 (a) In addition to such other powers and duties as may be conferred
8 upon him or her by law, the ~~Director of the Division of Labor~~ Secretary of
9 the Department of Labor and Licensing or his or her designee shall have the
10 power to make, modify, and repeal reasonable rules for the prevention of
11 accidents or industrial or occupational diseases in every employment or place
12 of employment and to make, modify, and repeal reasonable rules for the
13 construction, repair, and maintenance of places of employment, places of
14 public assembly, and public buildings which shall render them safe.

15 (b) The ~~director~~ secretary or his or her designee shall have the power
16 to make, modify, or repeal such rules, or changes in rules, as he or she may
17 deem necessary to carry out the provisions of this subchapter.

18 (c) The ~~director~~ secretary or his or her designee may appoint
19 committees composed of employers, employees, and experts to suggest rules or
20 changes therein.

21 (d) The rules of the ~~director~~ secretary or his or her designee shall
22 have the force and effect of law and shall be enforced by the ~~director~~
23 secretary or his or her designee in the same manner as the provisions of this
24 subchapter.

25
26 SECTION 20. Arkansas Code § 11-2-112 is amended to read as follows:

27 11-2-112. Promulgation of rules.

28 (a) Before any rule is adopted, amended, or repealed, there shall be a
29 public hearing thereon, notice of which shall be published at least once and
30 not less than ten (10) days prior to the public hearing in such newspaper as
31 the ~~Director of the Division of Labor~~ Secretary of the Department of Labor
32 and Licensing or his or her designee may prescribe.

33 (b)(1) All rules and all amendments and repeals thereof shall, unless
34 otherwise prescribed by the ~~director~~ secretary or his or her designee, take
35 effect thirty (30) days after the first publication thereof, and certified
36 copies shall be filed in the office of the Secretary of State.

1 (2) Every rule adopted and every amendment or repeal shall be
2 published in such manner as the ~~director~~ secretary or his or her designee may
3 determine, and the ~~director~~ secretary or his or her designee shall deliver a
4 copy to every person making application therefor. The ~~director~~ secretary or
5 his or her designee shall include the text of each rule or amendment in an
6 appendix to the annual report of the Division of Labor next following the
7 adoption or amendment of the rule.

8
9 SECTION 21. Arkansas Code § 11-2-113 is amended to read as follows:

10 11-2-113. Variation of rule due to difficulties or hardship.

11 (a) If there shall be practical difficulties or unnecessary hardships
12 in carrying out a rule of the ~~Director of the Division of Labor~~ Secretary of
13 the Department of Labor and Licensing or his or her designee, the ~~director~~
14 secretary or his or her designee may, after public hearing, make a variation
15 from such requirement if the spirit of the rule and law shall be observed.

16 (b) Any person affected by the rule, or his or her agent, may petition
17 the ~~director~~ secretary or his or her designee for a variation, stating the
18 grounds therefor.

19 (c) The ~~director~~ secretary or his or her designee shall fix a day for
20 a hearing on the petition and give reasonable notice to the petitioner.

21 (d) A properly indexed record of all variations made shall be kept in
22 the office of the Division of Labor and open to public inspection.

23
24 SECTION 22. Arkansas Code § 11-2-114 is amended to read as follows:

25 11-2-114. Judicial review of rules.

26 (a)(1) Any person aggrieved by a rule of the ~~Director of the Division~~
27 ~~of Labor~~ Secretary of the Department of Labor and Licensing or his or her
28 designee made pursuant to § 11-2-112 may commence an action in the Pulaski
29 County Circuit Court against the Division of Labor, as defendant, to set
30 aside the rule on the ground that it is unlawful or unreasonable.

31 (2) The action and the pleadings shall be governed by the laws
32 and rules of practice applicable to other civil actions in the court.

33 (3) Any action brought under this section shall be commenced
34 within thirty (30) days from the effective date of the rule.

35 (b)(1) All rules of the ~~director~~ secretary or his or her designee
36 shall be prima facie lawful and reasonable and shall not be held invalid

1 because of any technical defect, provided there is substantial compliance
2 with the provisions of this subchapter.

3 (2) All rules shall be conclusively presumed to be lawful and
4 reasonable if the action is not commenced within thirty (30) days from the
5 date of the rule as provided in this section.

6
7 SECTION 23. Arkansas Code § 11-2-115 is amended to read as follows:

8 11-2-115. Employer records – Inspection.

9 (a)(1) Every employer or owner shall furnish to the ~~Director of the~~
10 Secretary of the Department of Labor and Licensing or his
11 or her designee any information that the ~~director~~ secretary or his or her
12 designee is authorized to require and shall make true and specific answers to
13 all questions, whether submitted orally or in writing, authorized to be put
14 to the employer or owner.

15 (2)(A) Every employer shall keep a true and accurate record of
16 the name, address, and occupation of each person employed by the employer, of
17 the daily and weekly hours worked by each person, and of the wages paid each
18 pay period to each person.

19 (B) The records shall be kept on file for at least one (1)
20 year after the date of the record.

21 (C) No employer shall make or cause to be made any false
22 entries in any record.

23 (b) The ~~director~~ secretary and any authorized representative of the
24 Division of Labor shall, for the purpose of examination, have access to and
25 the right to copy from any book, account, record, payroll, paper, or
26 documents relating to the employment of workers.

27
28 SECTION 24. Arkansas Code § 11-2-116 is amended to read as follows:

29 11-2-116. Entry and inspection of workplace, etc.

30 (a) The ~~Director of the Division of Labor~~ Secretary of the Department
31 of Labor and Licensing and his or her authorized representatives shall have
32 the power and authority to enter any place of employment, place of public
33 assembly, or public building for the purpose of collecting facts and
34 statistics relating to the employment of workers and of making inspections
35 for the proper enforcement of all labor laws of the state.

36 (b) No employer or owner shall refuse to admit the ~~director~~ secretary

1 or his or her authorized representatives to his or her place of employment,
2 public building, or place of public assembly.

3
4 SECTION 25. Arkansas Code § 11-2-117(c), concerning safe places of
5 employment under the Division of Labor, is amended to read as follows:

6 (c)(1) If the ~~Director of the Division of Labor~~ Secretary of the
7 Department of Labor and Licensing or his or her authorized representative
8 finds that any machine, tool, or equipment, or any part thereof, is in a
9 dangerous condition, is not properly guarded, or is dangerously placed, he or
10 she shall attach to the machine, tool, or equipment a notice warning all
11 persons against its use and setting out in complete detail the conditions
12 that render the machine, tool, or equipment unfit for service.

13 (2) The machine, tool, or equipment shall not be used until it
14 is made safe, the required safeguards or safety appliances or devices as set
15 forth in the certificate attached thereto have been fully corrected, and
16 notice of the correction is sent to the Division of Labor by registered mail,
17 accompanied by a certificate from a competent mechanic certifying correction
18 of the defects.

19
20 SECTION 26. Arkansas Code § 11-2-118 is amended to read as follows:

21 11-2-118. Oaths, certifications, subpoenas, etc. – Enforcement by
22 contempt.

23 (a) The ~~Director of the Division of Labor~~ Secretary of the Department
24 of Labor and Licensing and any officer of the ~~Division of Labor~~ Department of
25 Labor and Licensing designated by the ~~director~~ secretary, in the performance
26 of any duty or the execution of any power prescribed by law, shall have the
27 power to administer oaths, certify to official acts, take and cause to be
28 taken depositions of witnesses, issue subpoenas, and compel the attendance of
29 witnesses and the production of papers, books, accounts, payrolls, documents,
30 records, and testimony.

31 (b) In case of failure of any person to comply with any subpoena
32 lawfully issued or on the refusal of any witness to produce evidence or to
33 testify to any matter regarding which he or she may be lawfully interrogated,
34 it shall be the duty of any court of competent jurisdiction or the judge
35 thereof, upon application of the ~~director~~ secretary or any officer or agent
36 of the ~~division~~ department, to compel obedience by attachment proceedings for

1 contempt, as in the case of disobedience of the requirements of a subpoena
2 issued for the court or a refusal to testify therein.

3
4 SECTION 27. Arkansas Code § 11-2-119 is amended to read as follows:

5 11-2-119. False statements made under oath deemed perjury.

6 Any employer or owner who shall knowingly testify falsely, under oath,
7 or shall knowingly make, give, or produce any false statements or false
8 evidence, under oath, to the ~~Director of the Division of Labor~~ Secretary of
9 the Department of Labor and Licensing or his or her authorized
10 representatives shall be deemed guilty of perjury.

11
12 SECTION 28. Arkansas Code § 11-2-120 is repealed.

13 ~~11-2-120. Annual report.~~

14 ~~(a) The Director of the Division of Labor shall annually, on or before~~
15 ~~January 1, file with the Secretary of the Department of Labor and Licensing a~~
16 ~~report covering the activities of the Division of Labor, accompanied by~~
17 ~~recommendations with reference to such changes in the law, applying to and~~
18 ~~affecting industrial and labor conditions, as the director may deem~~
19 ~~advisable.~~

20 ~~(b) The report of the director shall be printed and distributed in~~
21 ~~such manner as the secretary shall authorize.~~

22
23 SECTION 29. Arkansas Code § 11-2-121(a), concerning agreements with
24 government agencies and the Division of Labor, is amended to read as follows:

25 (a) The ~~Director of the Division of Labor~~ Secretary of the Department
26 of Labor and Licensing or his or her designee is authorized to enter into
27 agreements with the United States Government and any and all other state
28 governments for assistance and cooperation in enforcing and implementing
29 state and federal laws and projects in fields related to the ~~Division of~~
30 ~~Labor~~ Department of Labor and Licensing.

31
32 SECTION 30. Arkansas Code § 11-2-122(b) concerning required
33 disclosures by an employer of the benefits available to their employees, is
34 amended to read as follows:

35 (b) The notification shall be made at such time and in such manner as
36 prescribed by rules promulgated by the ~~Director of the Division of Labor~~

1 Secretary of the Department of Labor and Licensing or his or her designee.

2
3 SECTION 31. Arkansas Code § 11-2-204(a), concerning records and
4 confidential information under the Arkansas Mediation and Conciliation
5 Service Nondisclosure Act, is amended to read as follows:

6 (a) All files, reports, letters, memoranda, minutes, documents, or
7 other papers in the official custody of the Arkansas Mediation and
8 Conciliation Service or any of its employees, or any other information,
9 whether written or not, obtained in the course of any employee's official
10 duties, relating to or acquired in its or their official activities under the
11 labor laws of the state or the rules lawfully promulgated by the ~~Director of~~
12 ~~the Division of Labor~~ Secretary of the Department of Labor and Licensing or
13 his or her designee, are confidential.

14
15 SECTION 32. Arkansas Code § 11-2-205(b)(2), concerning compliance with
16 subpoenas under the Arkansas Mediation and Conciliation Service Nondisclosure
17 Act, is amended to read as follows:

18 (b)(2) Immediately upon receipt of the subpoena, the mediator or
19 former mediator or employee should contact the ~~Director of the Division of~~
20 ~~Labor~~ Secretary of the Department of Labor and Licensing or his or her
21 designee, who shall immediately notify the staff attorneys of the Department
22 of Labor and Licensing ~~of the state~~ to ensure that the procedures set forth
23 in this subchapter will be followed. The ~~director~~ secretary or his or her
24 designee then shall instruct the staff attorneys to appear in behalf of the
25 mediator and protect the ~~service~~ Arkansas Mediation and Conciliation Service
26 from any disclosure that violates the provisions contained in this
27 subchapter.

28
29 SECTION 33. Arkansas Code § 11-2-206(a)(1), concerning judicial review
30 under the Arkansas Mediation and Conciliation Service Nondisclosure Act, is
31 amended to read as follows:

32 (a)(1) The mediator or the ~~Director of the Division of Labor~~
33 Secretary of the Department of Labor and Licensing on his or her behalf or
34 the Attorney General on his or her behalf may obtain a review of the order
35 requiring him or her to testify.

36

1 SECTION 34. Arkansas Code § 11-3-203(c), concerning the prohibition on
2 requirements for a medical examination as a condition by any employer, is
3 amended to read as follows:

4 (c) The ~~Director of the Division of Labor~~ Secretary of the Department
5 of Labor and Licensing or his or her designee shall administer and enforce
6 this section, including without limitation, by:

7 (1) Adopting administrative rules; and

8 (2) Demanding payment and seeking recovery in a court of
9 competent jurisdiction for charges, fees, wage deductions, or other payments
10 made by employees as a result of an employer's violation of this section.

11
12 SECTION 35. Arkansas Code § 11-4-203(9), concerning the definition of
13 "wage" in the minimum wage law, is amended to read as follows:

14 (9) "Wage" means compensation due to an employee by reason of
15 his or her employment, payable in legal tender of the United States or checks
16 on banks convertible into cash on demand at full face value, subject to such
17 deductions, charges, or allowances as may be permitted by this subchapter or
18 by rules of the ~~Director of the Division of Labor~~ Secretary of the Department
19 of Labor and Licensing or his or her designee under this subchapter.

20
21 SECTION 36. Arkansas Code § 11-4-206 is amended to read as follows:

22 11-4-206. Penalties.

23 (a)(1) Any employer who willfully hinders or delays the ~~Director of~~
24 ~~the Division of Labor~~ Secretary of the Department of Labor and Licensing or
25 his or her authorized representative in the performance of his or her duties
26 in the enforcement of this subchapter, willfully refuses to admit the
27 ~~director~~ secretary or his or her authorized representative to any place of
28 employment, willfully fails to make, keep, and preserve any records as
29 required under the provisions of this subchapter, willfully falsifies any
30 such record, willfully refuses to make the record accessible to the ~~director~~
31 secretary or his or her authorized representative upon demand, willfully
32 refuses to furnish a sworn statement of the record or any other information
33 required for the proper enforcement of this subchapter to the ~~director~~
34 secretary or his or her authorized representative upon demand, willfully
35 fails to post a summary of this subchapter or a copy of any applicable rules
36 as required by § 11-4-216, pays or agrees to pay minimum wages at a rate less

1 than the rate applicable under this subchapter, or otherwise willfully
2 violates any provision of this subchapter or of any rule issued under this
3 subchapter shall be deemed in violation of this subchapter and shall be
4 subject to a civil penalty of not less than fifty dollars (\$50.00) and not
5 more than one thousand dollars (\$1,000) for each violation.

6 (2) For the purposes of this subsection, each violation shall
7 constitute a separate offense.

8 (b) Any employer who willfully discharges or in any other manner
9 willfully discriminates against any employee because the employee has made
10 any complaint to his or her employer or to the ~~director~~ secretary or his or
11 her authorized representative that he or she has not been paid minimum wages
12 in accordance with the provisions of this subchapter or because the employee
13 has caused to be instituted or is about to cause to be instituted any
14 proceeding under or related to this subchapter or because the employee has
15 testified or is about to testify in any such proceeding shall be deemed in
16 violation of this subchapter and shall be subject to a civil penalty of not
17 less than fifty dollars (\$50.00) and not more than one thousand dollars
18 (\$1,000) for each violation.

19 (c) For the purposes of this section, each day that the violation
20 continues shall constitute a separate offense.

21 (d) The ~~director~~ secretary or his or her designee shall determine the
22 amount of the penalty and shall consider the appropriateness of the penalty
23 to the size of the business and the gravity of the violation.

24 (e) The determination by the ~~director~~ secretary or his or her designee
25 shall be final unless within fifteen (15) days after receipt of notice
26 thereof by certified mail the person, firm, corporation, partnership, or
27 association charged with the violation notifies the ~~director~~ secretary or his
28 or her designee in writing that he or she contests the proposed penalty. In
29 the event that a penalty is contested, a final determination shall be made
30 pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

31 (f) Upon a final administrative determination, the amount of the
32 penalty may be recovered in a civil action brought by the ~~director~~ secretary
33 or his or her designee in a court of competent jurisdiction without paying
34 costs or giving bond for costs.

35 (g) Sums collected under this section shall be paid into the
36 Department of Labor and Licensing Special Fund.

1 (h) Assessment of a civil penalty by the ~~director~~ secretary or his or
2 her designee shall be made no later than three (3) years after the date of
3 the occurrence of the violation.

4 (i) In addition to the civil penalty provided by this section, the
5 ~~director~~ secretary or his or her designee is authorized to petition any court
6 of competent jurisdiction, without paying costs or giving bond for costs, to
7 enjoin or restrain any person, firm, corporation, partnership, or association
8 who violates the provisions of this subchapter or any rule issued thereunder.

9
10 SECTION 37. Arkansas Code § 11-4-209 is amended to read as follows:

11 11-4-209. ~~Director of the Division of Labor~~ Secretary of the
12 Department of Labor and Licensing – Powers and duties.

13 (a) For any occupation, the ~~Director of the Division of Labor~~
14 Secretary of the Department of Labor and Licensing shall make and revise such
15 administrative rules, including definitions of terms, as he or she may deem
16 appropriate to carry out the purposes of this subchapter or necessary to
17 prevent the circumvention or evasion thereof and to safeguard the minimum
18 wage rates established.

19 (b) The rules may include, but are not limited to, rules governing:

- 20 (1) Outside or commission salespersons;
21 (2) Learners and apprentices, their number, proportion, and
22 length of service;
23 (3) Part-time pay, bonuses, and fringe benefits;
24 (4) Special pay for special or extra work;
25 (5) Permitted charges to employees or allowances for board,
26 lodging, apparel, or other facilities or services customarily furnished by
27 employers to employees;
28 (6) Allowances for gratuities; and
29 (7) Allowances for other special conditions or circumstances
30 which may be usual in a particular employer-employee relationship.

31 (c) Rules shall be promulgated pursuant to the Arkansas Administrative
32 Procedure Act, § 25-15-201 et seq.

33 (d) The ~~director~~ secretary or his or her authorized representatives
34 shall:

- 35 (1) Have authority to enter and inspect the place of business or
36 employment of any employer in the state for the purpose of:

1 (A) Examining and inspecting any or all books, registers,
2 payrolls, and other records of any employer that in any way relate to or have
3 a bearing upon the question of wages, hours, and other conditions of
4 employment of any employees;

5 (B) Copying any or all of the books, registers, payrolls,
6 and other records as he or she may deem necessary or appropriate; and

7 (C) Questioning employees for the purpose of ascertaining
8 whether the provisions of this subchapter and rules issued under this
9 subchapter have been and are being complied with;

10 (2) Have authority to require from the employer full and correct
11 statements in writing, including sworn statements, with respect to wages,
12 hours, names, addresses, and such information pertaining to his or her
13 employees as the ~~director~~ secretary or his or her authorized representative
14 may deem necessary or appropriate;

15 (3) Publish all rules promulgated pursuant to this subchapter;
16 and

17 (4) Otherwise implement and enforce the provisions of this
18 subchapter and the rules issued under this subchapter.
19

20 SECTION 38. Arkansas Code § 11-4-211(g), concerning overtime under the
21 minimum wage law, is amended to read as follows:

22 (g) By rule, the ~~Director of the Division of Labor~~ Secretary of the
23 Department of Labor and Licensing or his or her designee may authorize
24 employment in excess of the standard set by subsection (a) of this section or
25 may authorize the calculation of overtime on a basis other than the regular
26 rate of pay required by subsection (a) of this section for employment:

27 (1) Necessitating irregular hours of work;

28 (2) At a piece rate;

29 (3) Paying on a commission basis in a retail or service
30 establishment;

31 (4) In a hospital or enterprise engaged in the care of the sick,
32 the aged, or individuals with mental illness;

33 (5) By an independently-owned-and-controlled local enterprise
34 engaged in the wholesale or bulk distribution of petroleum products; and

35 (6) Under a collective bargaining agreement.
36

1 SECTION 39. Arkansas Code § 11-4-212(b), concerning allowance for
2 gratuities under the minimum wage law, is amended to read as follows:

3 (b) In determining whether an employee received in gratuities the
4 amount claimed, the ~~Director of the Division of Labor~~ Secretary of the
5 Department of Labor and Licensing or his or her designee may require the
6 employee to show to the satisfaction of the ~~director~~ secretary or his or her
7 designee that the actual amount of gratuities received by him or her during
8 any work week was less than the amount determined by the employer as the
9 amount by which the wage paid the employee was deemed to be increased under
10 this section.

11
12 SECTION 40. Arkansas Code § 11-4-214 is amended to read as follows:

13 11-4-214. Temporary special exemptions – Definition.

14 (a) Any individual affected by lack of skill, age, or disability in a
15 way that his or her earning capacity is impaired shall be granted a temporary
16 special exemption license or permit authorizing the employment of the
17 individual at wages lower than the minimum prescribed in this subchapter
18 until such time as the ~~Director of the Division of Labor~~ Secretary of the
19 Department of Labor and Licensing or his or her designee shall hold a hearing
20 and prescribe rules regarding exemption of these individuals as authorized in
21 this section.

22 (b)(1) The ~~director~~ secretary or his or her designee may provide by
23 rule, after notice and public hearing at which any person may be heard, for
24 the employment in any occupation of individuals whose earning capacity is
25 impaired by age or disability at wages lower than the minimum wage rate
26 provided in § 11-4-210 as he or she may find appropriate to prevent
27 curtailment of opportunities for employment, to avoid undue hardship, and to
28 safeguard the minimum wage rate under this subchapter.

29 (2) In addition, the ~~director~~ secretary or his or her designee,
30 by rule or special order, may provide for the employment of individuals whose
31 earning capacity is impaired by age or disability in work activities centers
32 under special certificates at wages that are less than the minimum prescribed
33 in § 11-4-210 that the ~~director~~ secretary or his or her designee determines
34 constitutes equitable compensation for the clients in work activities
35 centers.

36 (c) For the purposes of this section, the term “work activities

1 centers” shall mean centers planned and designed exclusively to provide
2 therapeutic activities for clients with disabilities whose physical and
3 mental impairment is so severe as to make their productivity capacities
4 inconsequential.

5
6 SECTION 41. Arkansas Code § 11-4-215 is amended to read as follows:

7 11-4-215. Learners, apprentices, and full-time students.

8 (a) For any occupation, the ~~Director of the Division of Labor~~
9 Secretary of the Department of Labor and Licensing or his or her designee may
10 provide, by rule, after a public hearing at which any person may be heard,
11 for the employment in the occupation of learners, apprentices, and full-time
12 students at wages lower than the minimum wage rate provided in § 11-4-210(b)
13 as he or she may find appropriate to prevent curtailment of opportunities for
14 employment and to safeguard the minimum wage rate under this subchapter.

15 (b) No employee shall be employed at wages fixed pursuant to this
16 section, except under special license issued under applicable rules of the
17 ~~director~~ secretary or his or her designee.

18
19 SECTION 42. Arkansas Code § 11-4-216 is amended to read as follows:

20 11-4-216. Posting of law.

21 (a) Every employer subject to any provisions of this subchapter or of
22 any rules issued under this subchapter shall keep a summary of this
23 subchapter, approved by the ~~Director of the Division of Labor~~ Secretary of
24 the Department of Labor and Licensing or his or her designee, and copies of
25 any applicable rules issued under this subchapter, or a summary of the rules
26 approved by the ~~director~~ secretary or his or her designee, posted in a
27 conspicuous and accessible place in or about the premises wherein any person
28 subject thereto is employed.

29 (b) Employers shall be furnished copies of the summaries of this
30 statute and rules by the ~~director~~ secretary or his or her designee on request
31 without charge.

32
33 SECTION 43. Arkansas Code § 11-4-217 is amended to read as follows:

34 11-4-217. Records kept by employer.

35 (a) Every employer subject to any provision of this subchapter or of
36 any rule issued under this subchapter shall make and keep for a period of not

1 less than three (3) years in or about the premises wherein any employee is
2 employed a record of the name, address, and occupation of each of his or her
3 employees, the rate of pay, the amount paid each pay period to each employee,
4 and such other information as the ~~Director of the Division of Labor~~ Secretary
5 of the Department of Labor and Licensing or his or her designee shall
6 prescribe by rule as necessary or appropriate for the enforcement of the
7 provisions of this subchapter or of the rules under this subchapter.

8 (b) The records shall be open for inspection or transcription by the
9 ~~director~~ secretary or his or her authorized representative at any reasonable
10 time.

11 (c) Every employer shall furnish to the ~~director~~ secretary or to his
12 or her authorized representative on demand a sworn statement of the records
13 and information upon forms prescribed or approved by the ~~director~~ secretary.
14

15 SECTION 44. Arkansas Code § 11-4-218(d), concerning the recovery of
16 wages under the minimum wage law, is amended to read as follows:

17 (d)(1) The ~~Director of the Division of Labor~~ Secretary of the
18 Department of Labor and Licensing or his or her designee shall have the
19 authority to fully enforce this subchapter by instituting legal action to
20 recover any wages that he or she determines to be due to employees under this
21 subchapter.

22 (2) No legal action shall be brought by the ~~director~~ secretary
23 or his or her designee until after notice and opportunity for hearing
24 pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.,
25 and entry of a final administrative order.

26 (3)(A) Following any appeals taken pursuant to the Arkansas
27 Administrative Procedure Act, § 25-15-201 et seq., the ~~director~~ secretary or
28 his or her designee shall be entitled to enforce his or her final
29 administrative order in any court of competent jurisdiction without paying
30 costs or giving bond for costs.

31 (B) The ~~director's~~ secretary's or his or her designee's
32 findings of fact shall be conclusive in any such proceeding.
33

34 SECTION 45. Arkansas Code § 11-4-218(e)(2), concerning employee
35 complaints under the minimum wage law, is amended to read as follows:

36 (e)(2) If the employee brings an action under this subsection, then

1 any complaint before the ~~director~~ secretary or his or her designee by the
2 employee on the same matter shall be dismissed with respect to that employee.

3
4 SECTION 46. Arkansas Code § 11-4-219 is amended to read as follows:

5 11-4-219. Judicial review.

6 (a) Any interested person in any occupation for which any
7 administrative rule has been issued under the provisions of this subchapter
8 who may be aggrieved by any rule may obtain a review thereof in the circuit
9 court of the county of the residence of the aggrieved party by filing in the
10 court within twenty (20) days after the date of publication of the rule a
11 written petition praying that the rule be modified or set aside.

12 (b) A copy of the petition shall be served upon the ~~Director of the~~
13 ~~Division of Labor~~ Secretary of the Department of Labor and Licensing.

14 (c)(1) The court shall review the record of the proceedings before the
15 ~~director~~ secretary, and the ~~director's~~ secretary's findings of fact shall be
16 affirmed if supported by substantial evidence. The court shall determine
17 whether the rule is in accordance with law.

18 (2) If the court determines that the rule is not in accordance
19 with law, it shall remand the case to the ~~director~~ secretary with directions
20 to modify or revoke the rule.

21 (d)(1) If application is made to the court for leave to adduce
22 additional evidence by any aggrieved party, the party shall show to the
23 satisfaction of the court that the additional evidence is material and that
24 there were reasonable grounds for the failure to adduce the evidence before
25 the ~~director~~ secretary.

26 (2) If the court finds that the evidence is material and that
27 reasonable grounds exist for failure of the aggrieved party to adduce the
28 evidence in prior proceedings, the court shall remand the case to the
29 ~~director~~ secretary with directions that the additional evidence be taken
30 before the ~~director~~ secretary.

31 (3) The ~~director~~ secretary may modify his or her findings and
32 conclusions, in whole or in part, by reason of the additional evidence.

33 (e) Hearings in the circuit court on all appeals taken under the
34 provisions of this subchapter shall take precedence over all matters except
35 matters of the same character. The jurisdiction of the court shall be
36 exclusive, and its judgment and decree shall be final, except that it shall

1 be subject to review by the Supreme Court.

2 (f)(1) The commencement of proceedings under subsections (a)-(d) of
3 this section, unless specifically ordered by the court, shall not operate as
4 a stay of an administrative rule issued under the provisions of this
5 subchapter.

6 (2) The court shall not grant any stay of an administrative rule
7 unless the person complaining of the rule shall file an amount in the court,
8 undertaking with a surety satisfactory to the court, for payment to the
9 employees affected by the rule in the event that the rule is affirmed. The
10 surety shall be in an amount by which the compensation the employees are
11 entitled to receive under the rule exceeds the compensation they actually
12 receive while the stay is in effect.

13

14 SECTION 47. Arkansas Code § 11-4-220 is amended to read as follows:

15 11-4-220. Person entitled to file a claim.

16 (a) Any employee covered by this subchapter may file a claim with the
17 ~~Director of the Division of Labor~~ Secretary of the Department of Labor and
18 Licensing or his or her designee charging that an employer has violated § 11-
19 4-210 or § 11-4-211 as to any employee or other person.

20 (b) The ~~director~~ secretary or his or her designee shall promptly
21 investigate each claim.

22 (c) The name of any employee identified in a claim shall be kept
23 confidential until the ~~director~~ secretary or his or her designee issues an
24 administrative complaint or the ~~director~~ secretary or his or her designee is
25 ordered to release the information by order of a court of competent
26 jurisdiction.

27

28 SECTION 48. Arkansas Code § 11-4-303 is amended to read as follows:

29 11-4-303. ~~Director of the Division of Labor~~ Authority to conduct
30 hearing.

31 (a) Upon application of either employer or employee, the ~~Director of~~
32 ~~the Division of Labor~~ Secretary of the Department of Labor and Licensing or
33 any person authorized by the ~~director~~ secretary shall have authority to
34 inquire into, hear, and decide disputes arising from wages earned and shall
35 allow or reject any deduction from wages.

36 (b) Upon motion of either employer or employee, the amount found to be

1 due may be paid in the presence of the ~~director~~ secretary or person
2 designated by him or her, and after final hearing by the ~~director~~ secretary
3 or person appointed by him or her, he or she shall file in the office of the
4 Division of Labor a copy of findings and facts and his or her award.

5 (c) The amount of the award of the ~~director~~ secretary or his or her
6 designee shall be presumed to be the amount of wages, if any, due and unpaid
7 to the employee.

8
9 SECTION 49. Arkansas Code § 11-4-304 is amended to read as follows:

10 11-4-304. Judicial review.

11 (a) If either employer or employee shall fail or refuse to accept the
12 findings of the ~~Director of the Division of Labor~~ Secretary of the Department
13 of Labor and Licensing or his or her designee, then either shall have the
14 right to proceed at law as provided.

15 (b) If the claim is meritorious, and if within the discretion of the
16 ~~director~~ secretary or his or her designee the claimant's lack of financial
17 ability entitles him or her to the services of the Division of Labor, the
18 ~~director~~ secretary or his or her designee in the name of the State of
19 Arkansas, for the benefit of the claimant, may institute action in any court
20 of competent jurisdiction, without paying costs or giving bond for costs, and
21 shall be entitled to all remedies available to litigants in the prosecution
22 of actions and their enforcement, if successful.

23 (c) Nothing in this section shall be construed so as to relieve an
24 unsuccessful defendant from paying costs.

25
26 SECTION 50. Arkansas Code § 11-4-306 is amended to read as follows:

27 11-4-306. Fees prohibited.

28 The ~~Director of the Division of Labor~~ Secretary of the Department of
29 Labor and Licensing or any person designated by him or her shall not charge
30 or be permitted to accept any fees or remuneration whatsoever from any person
31 for the performance of any duties under this subchapter.

32
33 SECTION 51. Arkansas Code § 11-4-608 is amended to read as follows:

34 11-4-608. Penalties for violation of this section, §§ 11-4-607, and 11-
35 4-609 – 11-4-612.

36 Any employer who violates any provision of this section, §§ 11-4-607,

1 and 11-4-609 – 11-4-612, or who discharges or in any other manner
2 discriminates against any employee because the employee has made a complaint
3 to his or her employer, the ~~Director of the Division of Labor~~ Secretary of
4 the Department of Labor and Licensing, or any other person, has instituted or
5 caused to be instituted any proceedings under or related to this section,
6 §§ 11-4-607, and 11-4-609 – 11-4-612, or has testified or is about to testify
7 in any such proceeding shall be fined not more than five hundred dollars
8 (\$500) nor imprisoned more than one (1) year, or both.

9
10 SECTION 52. Arkansas Code § 11-4-609 is amended to read as follows:

11 11-4-609. Administration of this section, §§ 11-4-607 and 11-4-608,
12 and 11-4-610 – 11-4-612.

13 The ~~Director of the Division of Labor~~ Secretary of the Department of
14 Labor and Licensing or his or her designee shall have the power and it shall
15 be his or her duty to carry out and administer the provisions of this
16 section, §§ 11-4-607, 11-4-608, and 11-4-610 – 11-4-612.

17
18 SECTION 53. Arkansas Code § 11-4-611(b)(4), concerning actions to
19 collect unpaid wages under the laws concerning wage discrimination, is
20 amended to read as follows:

21 (b)(4) At the request of any employee paid less than the wage to which
22 he or she is entitled under this section, §§ 11-4-607 – 11-4-610, and 11-4-
23 612, the ~~Director of the Division of Labor~~ Secretary of the Department of
24 Labor and Licensing or his or her designee may take an assignment of the wage
25 claim in trust for the employee and shall bring any legal action necessary to
26 collect the claim. The ~~director~~ secretary or his or her designee shall not be
27 required to pay any court costs in connection with the action.

28
29 SECTION 54. Arkansas Code § 11-5-101(c), concerning suitable
30 temperature, humidity, and air space required under the laws concerning
31 working conditions, is amended to read as follows:

32 (c) In every room, apartment, or building used as a factory, mill,
33 workshop, mercantile establishment, laundry, or other place of employment,
34 sufficient air space shall be provided for every employee which in the
35 judgment of the ~~Director of the Division of Labor~~ Secretary of the Department
36 of Labor and Licensing or of his or her deputies and inspectors is sufficient

1 for the employees' health and welfare.

2
3 SECTION 55. Arkansas Code § 11-5-107(a), concerning inspections of a
4 working place under the laws concerning working conditions, is amended to
5 read as follows:

6 (a) The ~~Director of the Division of Labor~~ Secretary of the Department
7 of Labor and Licensing or any of his or her deputies or inspectors shall have
8 the right to enter any factory, mill, workshop, mercantile establishment,
9 laundry, or other establishment where three (3) or more persons are employed
10 for the purpose of making inspections and enforcing the provisions of this
11 section, §§ 11-5-101 – 11-5-106, and 11-5-108 – 11-5-111.

12
13 SECTION 56. Arkansas Code § 11-5-108(a), concerning the issuance of an
14 order to correct conditions under the laws concerning working conditions, is
15 amended to read as follows:

16 (a) The ~~Director of the Division of Labor~~ Secretary of the Department
17 of Labor and Licensing or any of his or her deputies or inspectors may issue
18 a written order to the owner, manager, superintendent, or other person in
19 control or management of the place or establishment for the correction of any
20 condition caused or permitted in or about the place or establishment in
21 violation of any of the requirements of this section, §§ 11-5-101 – 11-5-107,
22 and 11-5-109 – 11-5-111, or of any condition, practice, plan, or method used
23 therein or thereabouts in supposed compliance with any requirement of this
24 section, §§ 11-5-101 – 11-5-107, and 11-5-109 – 11-5-111 but which are found
25 to be inadequate or insufficient, in any respect, to comply therewith, and
26 shall state in the order how the conditions, practices, plans, or methods, in
27 any case, shall be corrected and the time within which they shall be
28 corrected, a reasonable time being given in the order therefor.

29
30 SECTION 57. Arkansas Code § 11-5-109(b)(1), concerning an order to
31 correct conditions under the laws concerning working conditions, is amended
32 to read as follows:

33 (b)(1) The owner or owners, manager, superintendent, or other person
34 in control or management of any place or establishment covered by this
35 chapter, and directly affected by any finding or order provided for in §§ 11-
36 5-107 and 11-5-108, may, within fifteen (15) days from the date of the

1 delivery to him, her, or them of a copy of the order as provided for in §§
2 11-5-107 and 11-5-108, file a petition setting forth the particular cause of
3 objection to the order and findings in a court of competent jurisdiction
4 against the ~~Director of the Division of Labor~~ Secretary of the Department of
5 Labor and Licensing or his or her designee.

6
7 SECTION 58. Arkansas Code § 11-5-110 is amended to read as follows:

8 11-5-110. Order to correct conditions – Penalties for noncompliance.

9 (a) Upon the failure or refusal of the owner, manager, superintendent,
10 or other person in control or management of a place or establishment, to
11 comply with an order issued pursuant to § 11-5-108 within the time therein
12 specified, unless it has been attacked and suspended or set aside as provided
13 for in § 11-5-109, the ~~Director of the Division of Labor~~ Secretary of the
14 Department of Labor and Licensing or his or her deputy or inspectors shall
15 have full authority and power to close the place or establishment, or any
16 part of it that may be in an unsanitary or dangerous condition or contain
17 immoral influences in violation of any requirement of this section or §§ 11-
18 5-101 – 11-5-109 or order, until such time as the condition, practice, or
19 method is corrected.

20 (b) Any person in control or management of any establishment included
21 in § 11-5-109 who shall fail or refuse to comply with any written order
22 issued to the person by the ~~director~~ secretary or any of his or her deputies
23 or inspectors, for the correction of any condition caused or permitted
24 therein which endangers the health of the employees therein or which does not
25 comply with the law governing those establishments, shall be punished as
26 provided in § 11-5-111.

27
28 SECTION 59. Arkansas Code § 11-5-112(b)(1), concerning separate
29 facilities for males and females required under the laws concerning working
30 conditions, is amended to read as follows:

31 (b)(1) The ~~Director of the Division of Labor~~ Secretary of the
32 Department of Labor and Licensing or his or her designee shall enforce the
33 provisions of this section and shall give notice in writing to employers
34 violating it.

35
36 SECTION 60. Arkansas Code § 11-5-307(a), concerning notification for

1 working near high voltage lines, is amended to read as follows:

2 (a)(1) When any person, firm, or corporation desires to temporarily
3 carry on any function, activity, work, or operation in closer proximity to
4 any energized overhead electrical line or conductor than permitted by this
5 subchapter, the person or persons responsible for the work to be done shall
6 promptly notify the ~~Director of the Division of Labor~~ Secretary of the
7 Department of Labor and Licensing or his or her designee and the operator or
8 owner of the electrical lines in writing of the work to be performed and make
9 appropriate arrangements with the operator of the electrical lines before
10 proceeding with any work which would impair the clearances required by this
11 subchapter.

12 (2) The written notice shall be given to the owner or operator
13 of the electrical lines by submitting notification to the manager of the
14 nearest local office of the operator or owner of the electrical lines with a
15 copy forwarded to the ~~director~~ secretary or his or her designee.

16
17 SECTION 61. Arkansas Code § 11-5-308(c)(4), concerning prohibited acts
18 for work near high voltage lines, is amended to read as follows:

19 (c)(4) In addition to the requirements of subdivisions (c)(1)(A) and
20 (B) of this section, there shall be installed an insulated cage-type guard or
21 protective device, approved by the ~~Director of the Division of Labor~~
22 Secretary of the Department of Labor and Licensing or his or her designee,
23 about the boom or arm of all equipment, except backhoes or dippers. Where the
24 equipment includes a lifting hook device also approved by the ~~director~~
25 secretary or his or her designee, all lifting lines shall be equipped with
26 insulator links on the lift hook connection.

27
28 SECTION 62. Arkansas Code § 11-6-103, resulting from Initiated Act 1
29 of 1914, is amended to read as follows:

30 11-6-103. Penalty – Disposition of fines – Definition.

31 (a)(1) Any person, firm, corporation, partnership, association,
32 parent, guardian, or custodian who employs or permits or suffers any child to
33 be employed or to work in violation of this subchapter or §§ 11-12-101 – 11-
34 12-105, or any rules issued thereunder, shall be subject to a civil penalty
35 of not less than one hundred dollars (\$100) and not more than five thousand
36 dollars (\$5,000) for each violation.

1 (2) Each day the violation continues shall with respect to each
2 child so employed or permitted work constitute a separate offense.

3 (b) The ~~Director of the Division of Labor~~ Secretary of the Department
4 of Labor and Licensing or his or her designee shall determine the amount of
5 such penalty and shall consider the appropriateness of such penalty to the
6 size of the business and the gravity of the violation.

7 (c) The determination by the ~~director~~ secretary or his or her designee
8 shall be final unless within fifteen (15) days after receipt of notice
9 thereof by certified mail, the person, firm, corporation, partnership, or
10 association charged with the violation notifies the ~~director~~ secretary or his
11 or her designee in writing that he or she contests the proposed penalty. In
12 the event that penalty is contested, a final determination shall be made
13 pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

14 (d) The amount of penalty when finally determined may be recovered in
15 a civil action brought by the ~~director~~ secretary or his or her designee in a
16 court of competent jurisdiction, without paying costs or giving bond for
17 costs.

18 (e) Sums collected under this section shall be paid into the
19 Department of Labor and Licensing Special Fund.

20 (f) Assessment of a civil penalty by the ~~director~~ secretary or his or
21 her designee shall be made no later than three (3) years from the date of the
22 occurrence of the violation.

23 (g) In addition to the civil penalty provided by this section, the
24 ~~director~~ secretary or his or her designee is authorized to petition any court
25 of competent jurisdiction, without paying costs or giving bond for costs, to
26 enjoin or restrain any person, firm, corporation, partnership, or association
27 who violates the provisions of this subchapter or §§ 11-12-101 – 11-12-105,
28 or any rule issued thereunder.

29 (h)(1) In addition to the civil penalties provided for in subsection
30 (a) of this section, an employer who knowingly violates this subchapter is,
31 upon conviction, guilty of a Class C misdemeanor.

32 (2) Upon a second or subsequent conviction, the employer is
33 guilty of a Class B misdemeanor.

34 (i)(1) In addition to the civil penalties provided for in subsection
35 (a) of this section and the criminal penalties provided for in subsection (h)
36 of this section, an employer who knowingly violates this subchapter and the

1 violation results in a serious physical injury to or death of a minor is,
2 upon conviction, guilty of a Class A misdemeanor.

3 (2) Upon a second or subsequent conviction, the employer is
4 guilty of a Class C felony.

5 (j) An employer that willfully engages in any of the following actions
6 is in violation of this subchapter and subject to a civil penalty of not less
7 than one hundred dollars (\$100) and not more than five thousand dollars
8 (\$5,000) for each violation:

9 (1) Hinders or delays the ~~director~~ secretary or his or her
10 authorized representative in the performance of his or her duties in the
11 enforcement of this subchapter; and

12 (2) Falsifies records related to child labor.

13 (k) As used in this section, "employer" means every person, firm,
14 corporation, partnership, stock association, agent, manager, representative,
15 foreman, or other person having control or custody of any employment, place
16 of employment, or of any employee.

17

18 *SECTION 63. Arkansas Code § 11-6-107(b)(1), resulting from Initiated*
19 *Act 1 of 1914, concerning prohibitions against certain kinds and places of*
20 *work for children under sixteen years, is amended to read as follows:*

21 (b)(1) The ~~Director of the Division of Labor~~ Secretary of the
22 Department of Labor and Licensing or his or her designee may, from time to
23 time after a hearing duly had, determine what other occupations are
24 sufficiently dangerous to the life or limb or injurious to the health or
25 morals of children under sixteen (16) years to justify their exclusion
26 therefrom. No child under sixteen (16) years of age shall be employed or
27 permitted to work in any occupation thus determined to be dangerous or
28 injurious.

29

30 *SECTION 64. Arkansas Code § 11-6-111, resulting from Initiated Act 1*
31 *of 1914, is amended to read as follows:*

32 11-6-111. Inspection of workplace – Prosecution of violators.

33 (a) The ~~Director of the Division of Labor~~ Secretary of the Department
34 of Labor and Licensing or his or her designee shall have the right to enter
35 any building or premises for the purpose of inspection to ascertain whether
36 any child is employed or permitted to work in violation of the provisions of

1 this subchapter.

2 (b)(1) It shall be the duty of the ~~director~~ secretary or his or her
3 designee to enforce and administer the provisions of this subchapter.

4 (2) The ~~director~~ secretary or his or her designee is authorized
5 to adopt rules for the enforcement and administration of this subchapter.

6 (3) The ~~director~~ secretary or his or her designee may revoke an
7 employment certificate for cause.

8

9 SECTION 65. Arkansas Code § 11-6-115(a), concerning the definition of
10 "domestic labor" pertaining to child labor, is amended to read as follows:

11 (a) As used in this section, "domestic labor" means any occasional,
12 irregular, or incidental work related to and in or around private residences,
13 including, but not limited to babysitting, pet sitting, similar household
14 chores, and manual yard work. This definition specifically excludes
15 industrial homework, work for a third party such as a sitting service, and
16 any activity determined by the ~~Director of the Division of Labor~~ Secretary of
17 the Department of Labor and Licensing or his or her designee to be hazardous
18 pursuant to the provisions of § 11-6-107(b).

19

20 SECTION 66. Arkansas Code § 11-7-402 is amended to read as follows:

21 11-7-402. ~~Director of the Division of Labor~~ Secretary of the
22 Department of Labor and Licensing – Power to administer oaths.

23 (a) To more effectively carry out the intentions and purposes of this
24 section and §§ 11-7-409 – 11-7-414, the ~~Director of the Division of Labor~~
25 Secretary of the Department of Labor and Licensing or his or her designee may
26 administer oaths to all persons who are applicants, or who may vouch, in any
27 manner, for the previous service or qualifications of an applicant to obtain
28 for him or her a certificate under this section and §§ 11-7-409 – 11-7-414.

29 (b) A person who falsely testifies or swears to any matter material to
30 the examination or to the service or qualification of an applicant is guilty
31 of perjury.

32

33 SECTION 67. Arkansas Code § 11-7-404(a)(1), concerning certificates
34 pertaining to the regulation of mines, is amended to read as follows:

35 (a)(1) The ~~Director of the Division of Labor~~ Secretary of the
36 Department of Labor and Licensing or his or her designee shall grant

1 certificates after examination by the Division of Labor or a determination by
2 the division that the testing requirements have been satisfied in another
3 jurisdiction.

4
5 SECTION 68. Arkansas Code § 11-7-404(b)(3)(A), concerning emergencies
6 pertaining to the regulation of mines, is amended to read as follows:

7 (3)(A) In case of emergency, a mine owner, with consent of the
8 ~~director~~ secretary or his or her designee, may employ a trustworthy or
9 experienced man or woman who does not possess a certificate, for a period of
10 not more than thirty (30) days as mine foreman or fire boss.

11
12 SECTION 69. Arkansas Code § 11-7-405 is amended to read as follows:

13 11-7-405. Fire bosses, mine foremen, etc. – Duplicate certificate.

14 In case of loss or destruction of a certificate, the ~~Director of the~~
15 ~~Division of Labor~~ Secretary of the Department of Labor and Licensing or his
16 or her designee, upon satisfactory proof of the loss or destruction, may
17 issue a duplicate on the payment of the sum of one dollar (\$1.00).

18
19 SECTION 70. Arkansas Code § 11-7-406 is amended to read as follows:

20 11-7-406. Fire bosses, mine foremen, etc. – Revocation of certificate.

21 (a) All certificates issued pursuant to this subchapter may be revoked
22 by the ~~Director of the Division of Labor~~ Secretary of the Department of Labor
23 and Licensing or his or her designee after a hearing upon due notice to the
24 holder of the certificate and upon written charges preferred by the ~~director~~
25 secretary or by some interested person for violation of this section and §§
26 11-7-403 – 11-7-405 and 11-7-407.

27 (b)(1) A complaint may be filed against the holder of a certificate
28 for intoxication, mental disabilities, neglect of duty, or other sufficient
29 cause.

30 (2) The holder of the certificate so cancelled shall have the
31 right to appear before the ~~director~~ secretary or his or her designee after
32 the expiration of three (3) months and be reexamined if he or she shall first
33 satisfy the ~~director~~ secretary or his or her designee that the incapacity
34 complained of has ceased to exist.

35
36 SECTION 71. Arkansas Code § 11-7-410(a), concerning coal miners

1 pertaining to the regulation of mines, is amended to read as follows:

2 (a) It shall be unlawful for any person to work as a coal miner in any
3 coal mine in this state without first having a certificate of qualification
4 and competency to do so from the ~~Director of the Division of Labor~~ Secretary
5 of the Department of Labor and Licensing or his or her designee, nor shall
6 any person, firm, or corporation employ as a coal miner in his or her coal
7 mine in the State of Arkansas any person who does not hold a certificate, nor
8 shall any mine foreman, overseer, or superintendent permit or suffer any
9 person to be employed under him or her, or in any coal mine under his or her
10 charge or supervision, as a coal miner in this state, except as provided in
11 this act, who does not hold a certificate of qualification.

12
13 SECTION 72. Arkansas Code § 11-7-411 is amended to read as follows:

14 11-7-411. Coal miners – Examination qualifications – Certificates.

15 (a) The ~~Director of the Division of Labor~~ Secretary of the Department
16 of Labor and Licensing or his or her designee shall hold sufficient
17 examinations each year in places to be determined by the ~~director~~ secretary
18 or his or her designee, which, in his or her opinion, will be most convenient
19 to applicants desiring to engage in the business of coal mining.

20 (b) All examinations held by the ~~director~~ secretary or his or her
21 designee shall be conducted in the English language and shall be of a
22 practical nature, so as to determine the competency and qualifications of
23 each applicant.

24 (c) The ~~director~~ secretary or his or her designee shall:

25 (1) Examine under oath all persons who apply for certificates,
26 except those regularly employed in the State of Arkansas and exempted under §
27 11-7-409, as to their previous experience as coal miners; and

28 (2)(A) Grant certificates of competency and qualification to
29 such applicants as the ~~director~~ secretary or his or her designee finds to be
30 qualified.

31 (B) The certificate, when so issued, entitles the holder
32 to be employed as, and to do the work of, a coal miner in this state.

33 (d)(1) A certificate of competency and qualification shall not be
34 issued or delivered to any person under this act, unless:

35 (A) He or she first produces evidence of having had not
36 less than two (2) years of practical experience working as a coal miner or

1 working with a coal miner; and

2 (B) He or she is competent to mine coal in the coal mines
3 of this state.

4 (2) In no case shall the applicant be deemed competent or
5 qualified under this act unless he or she appears in person before the
6 ~~director~~ secretary or his or her designee and orally answers correctly at
7 least twelve (12) practical questions propounded to him or her by the
8 ~~director~~ secretary or his or her designee pertaining to requirements and
9 qualifications of a practical coal miner.

10 (e) The ~~director~~ secretary or his or her designee shall keep an
11 accurate record of proceedings and meetings and in the record shall show a
12 correct detailed account of the examination of each applicant with the
13 questions asked and his or her answers, and the ~~director~~ secretary or his or
14 her designee shall keep the records open for the inspection of the parties in
15 interest.

16 (f) A miner's certificate granted under this act is not transferable,
17 and any effort to transfer the certificate shall be deemed a violation of
18 this act.

19 (g) The certificate shall be issued and signed by the ~~director~~
20 secretary or his or her designee.

21 (h)(1) Each applicant for the certificate provided for under this
22 section shall pay a fee of fifty cents (50¢) to the ~~director~~ secretary or his
23 or her designee at the time of making application and, if successful in the
24 examination, shall pay an additional fee of fifty cents (50¢) for the
25 certificate.

26 (2) All fees collected from applicants shall be paid into the
27 Coal Mine Examining Fund and paid out of the fund as other moneys are paid
28 out.

29

30 SECTION 73. Arkansas Code § 11-7-412(a), concerning temporary permits
31 for coal miners pertaining to the regulation of mines, is amended to read as
32 follows:

33 (a) A person making application for a coal miner's certificate of
34 competency and qualification shall be granted a temporary permit to work
35 until such time as an examination is held by the ~~Director of the Division of~~
36 ~~Labor~~ Secretary of the Department of Labor and Licensing or his or her

1 designee and if, in the judgment of the ~~director~~ secretary or his or her
2 designee, he or she is so qualified.

3
4 SECTION 74. Arkansas Code § 11-7-414 is amended to read as follows:
5 11-7-414. Coal miners – Duplicate certificate – Revocation of
6 certificate.

7 The ~~Director of the Division of Labor~~ Secretary of the Department of
8 Labor and Licensing or his or her designee shall possess powers to issue
9 duplicate certificates and revoke certificates in all cases as provided in §§
10 11-7-405 and 11-7-406.

11
12 SECTION 75. Arkansas Code § 11-10-718(b)(1)(B)(ii), concerning liens
13 under the Division of Workforce Services Law, is amended to read as follows:

14 (ii) All liens issued under this chapter by the
15 ~~Director of the Division of Labor~~ Secretary of the Department of Labor and
16 Licensing or his or her designee shall remain in full force and effect and
17 shall be fully enforceable by the Director of the Division of Workforce
18 Services.

19
20 SECTION 76. Arkansas Code § 11-11-101 is amended to read as follows:

21 11-11-101. Recruitment of labor by foreign labor agents.

22 (a) No foreign labor agent, labor bureau or employment agency, or any
23 other person shall enter this state and attempt to hire, induce, or take from
24 this state any labor, singularly or in groups, for any purpose, whether or
25 not a fee or charge is extracted from the worker, without first applying to
26 the ~~Director of the Division of Labor~~ Secretary of the Department of Labor
27 and Licensing or his or her designee for a license to do so and filing with
28 the ~~director~~ secretary or his or her designee:

29 (1) A statement as to where the labor is to be taken, for what
30 purpose, for what length of time, and whether transportation is to be paid to
31 and from the destination, if temporary;

32 (2) A statement of the financial standing of the employer
33 desiring the labor;

34 (3) An affidavit of authority to represent the employer in this
35 state; and

36 (4) Whatever other information the ~~director~~ secretary or his or

1 her designee may require.

2 (b)(1) The ~~director~~ secretary or his or her designee shall determine
3 whether the person desiring the labor from this state is a labor agent, labor
4 bureau, or employment agency and, if so, whether the applicant is qualified
5 to be licensed under the laws of this state and according to the provisions
6 of this section.

7 (2) The ~~director~~ secretary or his or her designee, after the
8 investigation, may refuse to license or register the applicant until the
9 applicant has complied with the provisions of this section.

10 (3) The applicant shall, in the event of unfavorable action by
11 the ~~director~~ secretary or his or her designee, have the right of appeal to
12 the proper court.

13 (c) This section is cumulative to all existing laws affecting the
14 hiring or employment of labor.

15

16 SECTION 77. Arkansas Code § 11-11-203 is amended to read as follows:
17 11-11-203. Penalty.

18 (a) The ~~Director of the Division of Labor~~ Secretary of the Department
19 of Labor and Licensing or his or her designee shall have authority to impose
20 a fine of not less than twenty-five dollars (\$25.00) nor more than five
21 hundred dollars (\$500) for violation of the provisions of this subchapter by
22 an employment agency or its employees or agents.

23 (b) The ~~director~~ secretary or his or her designee shall notify the
24 employment agency in writing of the reasons for imposition of a fine and at
25 that time shall make available to the employment agency a signed written
26 statement by any individual having filed a complaint with the ~~director~~
27 secretary or his or her designee relative to the matter for which a fine has
28 been imposed by the ~~director~~ secretary or his or her designee.

29 (c) The agency shall have the right to a hearing before the ~~director~~
30 secretary or his or her designee and the right to judicial review provided by
31 § 11-11-223 with respect to the fine.

32

33 SECTION 78. Arkansas Code § 11-11-204 is amended to read as follows:
34 11-11-204. ~~Director and division~~ Division of Labor – Powers and
35 duties.

36 (a) It shall be the duty of the Division of Labor, and it shall have

1 the power, jurisdiction, and authority to administer and enforce the
2 provisions of this subchapter.

3 (b) ~~The Director of the Division of Labor~~ Secretary of the Department
4 of Labor and Licensing or his or her duly authorized agent shall have the
5 power, jurisdiction, and authority to issue licenses to employment agencies,
6 agency managers, and counselors and to refuse to issue, revoke, or suspend
7 the licenses when, after due investigation, and in compliance with the
8 procedures set forth in §§ 11-11-221 and 11-11-222, the ~~director~~ secretary or
9 his or her duly authorized agent finds that the applicant is for good and
10 sufficient cause unfit to be an employment agent, agency manager, or
11 counselor within the meaning of this subchapter or any rules or orders
12 lawfully promulgated under this subchapter.

13 (c)(1) Complaints against any person, employment agent, agency
14 manager, or counselor may be made to the division orally or in writing.

15 (2) The ~~director~~ secretary or his or her duly authorized agent
16 shall have the power to compel attendance of witnesses by issuance of
17 subpoenas, administer oaths, direct production of documents and records, and
18 direct taking of testimony and evidence concerning all matters within the
19 jurisdiction of the division.

20 (3) The ~~director~~ secretary or his or her duly authorized agent
21 may order testimony to be taken by deposition in any proceeding pending
22 before the division at any stage of the proceeding.

23 (4) The ~~director~~ secretary or his or her duly authorized agent
24 shall at all reasonable times have access to, for the purpose of examination
25 and copying, the books, records, papers, and documents of any person being
26 investigated or proceeded against under the provisions of this subchapter, so
27 long as the books, records, papers, or documents sought to be inspected or
28 copied are reasonably related to the investigation or proceeding being
29 conducted by the ~~director~~ secretary or his or her duly authorized agent.

30 (5) The ~~director~~ secretary or his or her authorized agent shall,
31 upon application of any party to proceedings before the ~~director~~ secretary or
32 his or her duly authorized agent, issue to the party subpoenas requiring the
33 attendance and testimony of witnesses or the production of any books,
34 records, papers, or documents reasonably related to issues involved in
35 proceedings before the ~~director~~ secretary or his or her duly authorized agent
36 or an investigation conducted by the ~~director~~ secretary or his or her duly

1 authorized agent.

2 (6) If any person in proceedings before the ~~director~~ secretary
3 or his or her duly authorized agent or in investigations conducted by the
4 ~~director~~ secretary or his or her duly authorized agent disobeys or resists
5 any lawful order or process issued by the ~~director~~ secretary or his or her
6 authorized agents, or fails to produce, after being lawfully directed to do
7 so, any book, paper, record, or document, or refuses to appear and testify
8 after being subpoenaed to do so, the ~~director~~ secretary or his or her duly
9 authorized agent shall certify the facts to any court of competent
10 jurisdiction in the state or to the Pulaski County Circuit Court.

11 (7) The court shall have authority to conduct hearings and
12 punish any person for failure or refusal to testify or produce books, papers,
13 documents, or records subpoenaed or ordered by the ~~director~~ secretary or his
14 or her duly authorized agent as though the conduct constituted contempt of
15 court.

16 (8) Witnesses summoned by the ~~director~~ secretary or his or her
17 authorized agent shall be paid the same fees and mileage paid to witnesses in
18 the courts of this state.

19 (d)(1) The ~~director~~ secretary or his or her duly authorized agent may
20 prescribe such rules for the conduct of the business of private employment
21 agencies as necessary to implement this subchapter.

22 (2) These rules shall have the force and effect of law and shall
23 be enforced by the ~~director~~ secretary or his or her duly authorized agent in
24 the same manner as the provisions of this subchapter.

25 (3) Adoption of rules pursuant to this subsection shall be
26 carried out in compliance with the Arkansas Administrative Procedure Act, §
27 25-15-201 et seq.

28 (e) The division shall have authority to investigate employment
29 agents, agency managers, and counselors. The division shall have the right to
30 examine records required by law to be kept and maintained by employment
31 agents, agency managers, and counselors and to examine the offices where the
32 business is or shall be conducted by them.

33 (f) The division may seek to recover in a court of competent
34 jurisdiction fees charged or collected in violation of this subchapter.

35

36 SECTION 79. Arkansas Code § 11-11-208(b)(2), concerning the license

1 required for a private employment agency, is amended to read as follows:

2 (2) In addition to the penalties described in subdivision (b)(1)
3 of this section, upon petition of the ~~Director of the Division of Labor~~
4 Secretary of the Department of Labor and Licensing or his or her designee,
5 any court in the state having the statutory power to enjoin or restrain shall
6 have jurisdiction to restrain and enjoin any person who engages in the
7 business of or acts as an employment agent, agency manager, or counselor
8 without having first procured a license for so engaging or acting.

9
10 SECTION 80. Arkansas Code § 11-11-209 is amended to read as follows:

11 11-11-209. Certificate of exemption required for certain
12 organizations.

13 (a) Bona fide nursing schools, nurses' registries, management
14 consulting firms, business schools, vocational schools whose primary function
15 and purpose is training and education, and resume services shall obtain from
16 the ~~Director of the Division of Labor~~ Secretary of the Department of Labor
17 and Licensing or his or her designee a certificate of exemption from the
18 requirements of this subchapter.

19 (b) In connection with issuance of a certificate of exemption and with
20 respect to an organization's continued eligibility for a previously issued
21 certificate of exemption, the ~~director~~ secretary or his or her designee shall
22 have those investigative powers conferred by § 11-11-204.

23
24 SECTION 81. Arkansas Code § 11-11-210(b), concerning an application
25 for an employment counselor license, is amended to read as follows:

26 (b)(1) Every applicant for an initial license for employment counselor
27 shall file with the Division of Labor a written application on a form
28 prescribed and furnished by the ~~Director of the Division of Labor~~ Secretary
29 of the Department of Labor and Licensing or his or her designee.

30 (2) The applicant shall file at least two (2) letters of
31 character reference from persons of reputed business or professional
32 integrity.

33 (3) This application shall contain information prescribed by the
34 ~~director~~ secretary or his or her designee.

35
36 SECTION 82. Arkansas Code § 11-11-211 is amended to read as follows:

1 11-11-211. Agency manager license – Application – Qualifications.

2 (a) To be eligible to apply for a license to act as an agency manager,
3 the applicant shall be:

4 (1) A citizen of the United States;

5 ~~(2) Of good moral character;~~

6 ~~(3)~~ At least twenty-one (21) years of age;

7 ~~(4)~~(3) A person whose license has not been revoked within two
8 (2) years from the date of the application;

9 ~~(5)~~(4) A person who has completed the twelfth grade, except that
10 the ~~Director of the Division of Labor~~ Secretary of the Department of Labor
11 and Licensing or his or her designee may establish proof necessary to him or
12 her that the applicant is possessed of a twelfth-grade education in terms of
13 intellectual competency, judgment, and achievement; and

14 ~~(6)~~(5) A person who demonstrates business integrity, financial
15 responsibility, and judgment.

16 (b)(1) Every applicant for an initial license for agency manager shall
17 file with the Division of Labor a written application on a form prescribed
18 and furnished by the ~~director~~ secretary or his or her designee.

19 (2) The applicant shall file at least two (2) letters of
20 character reference from persons of reputed business or professional
21 integrity.

22 (3) This application shall contain information prescribed by the
23 ~~director~~ secretary or his or her designee.

24
25 SECTION 83. Arkansas Code § 11-11-212 is amended to read as follows:

26 11-11-212. Employment agency license – Application – Qualifications.

27 (a) To be eligible to apply for a license to operate an employment
28 agency, the applicant shall be:

29 (1) A citizen of the United States;

30 ~~(2) Of good moral character;~~

31 ~~(3)~~ At least twenty-one (21) years of age;

32 ~~(4)~~(3) A person whose license has not been revoked within two
33 (2) years from the date of the application;

34 ~~(5)~~(4) A person who has completed the twelfth grade, except that
35 the ~~Director of the Division of Labor~~ Secretary of the Department of Labor
36 and Licensing or his or her designee may establish proof necessary to him or

1 her that the applicant is possessed of a twelfth-grade education in terms of
2 intellectual competency, judgment, and achievement; and

3 ~~(6)~~(5) A person who demonstrates business integrity, financial
4 responsibility, and judgment.

5 (b)(1) Every applicant for an initial employment agency license and
6 every applicant for a renewal license shall file with the ~~Director of the~~
7 ~~Division of Labor~~ secretary or his or her designee a completed application on
8 a form prescribed and furnished by the ~~Director of the Division of Labor~~
9 secretary or his or her designee.

10 (2)(A) The application shall be signed by the applicant and
11 sworn to before anyone qualified by law to administer oaths.

12 (B) If the applicant is a corporation, the application
13 shall state the names and home addresses of all shareholders, officers, and
14 directors of the corporation and shall be signed and sworn to by the
15 president, treasurer, and secretary thereof.

16 (C) If the applicant is a partnership, the application
17 shall state the names and home addresses of all partners therein and shall be
18 signed and sworn to by all of them.

19 (3) The applicant shall file at least two (2) letters of
20 character reference from persons of reputed business or professional
21 integrity.

22 (4) This application shall also contain such other information
23 as the ~~Director of the Division of Labor~~ secretary or his or her designee may
24 prescribe.

25
26 SECTION 84. Arkansas Code § 11-11-213 is amended to read as follows:

27 11-11-213. Employment agency license – Bond required – Action on the
28 bond.

29 (a)(1) Every application for issuance or renewal of an employment
30 agency's license shall be accompanied by a bond in the sum of five thousand
31 dollars (\$5,000) with a duly licensed surety company or companies authorized
32 to do business in this state.

33 (2) The terms and conditions of the bond shall be approved by
34 the ~~Director of the Division of Labor~~ Secretary of the Department of Labor
35 and Licensing or his or her designee.

36 (3) The bond shall be conditioned that the employment agency and

1 each member, employee, shareholder, director, or officer of a person, firm,
2 partnership, corporation, or association operating as the employment agency
3 will not violate the provisions of this subchapter or violate rules or orders
4 lawfully promulgated by the ~~director~~ secretary or his or her designee or
5 violate the terms of any contract made by the employment agent in the conduct
6 of its business.

7 (b)(1) If any person shall be aggrieved by the misconduct of any
8 licensee, that person may maintain an action in his or her own name upon the
9 bond of the employment agency in any court of competent jurisdiction or in
10 the Pulaski County Circuit Court.

11 (2)(A) All claims shall be assignable, and the assignee shall be
12 entitled to the same remedies upon the bond of the licensee as the person
13 aggrieved would have been entitled to if the claim had not been assigned.

14 (B) Any claim so assigned may be enforced in the name of
15 the assignee.

16 (3) Any remedies given by this section shall not be exclusive of
17 any other remedy that would otherwise exist.

18 (c) Action on the bond required by this section may be maintained by
19 the ~~director~~ secretary or his or her designee in the name of the state in any
20 court of competent jurisdiction or in the Pulaski County Circuit Court, for
21 the benefit of any person or persons aggrieved by the misconduct of the
22 licensee.

23 (d)(1) If any licensee fails to file a new bond with the Division of
24 Labor within thirty (30) days after notice of cancellation by the surety of
25 the bond required by this section, the license issued to the principal under
26 the bond is suspended until such time as a new surety bond is filed with and
27 approved by the ~~director~~ secretary or his or her designee.

28 (2) A person whose license is suspended pursuant to this
29 subsection shall not carry on the business of an employment agency during the
30 period of the suspension.

31
32 SECTION 85. Arkansas Code § 11-11-214 is amended to read as follows:

33 11-11-214. Investigation of license applicant ~~by director~~.

34 (a) Upon filing of an application for a license as provided in this
35 subchapter, the ~~Director of the Division of Labor~~ Secretary of the Department
36 of Labor and Licensing or his or her designee shall cause an investigation to

1 be made regarding the ~~character~~, business integrity, and financial
2 responsibility of the license applicant.

3 (b) The ~~director~~ secretary or his or her designee shall also determine
4 the suitability or unsuitability of the applicant's proposed office location.

5 (c) An application for an employment agency's, agency manager's, or
6 employment counselor's license shall be rejected by the ~~director~~ secretary or
7 his or her designee if it is found that any person named in the license
8 application ~~is not of good moral character~~, fails to possess business
9 integrity, or financial responsibility or if there is good and sufficient
10 reason within the meaning and purpose of this subchapter for rejecting the
11 application.

12
13 SECTION 86. Arkansas Code § 11-11-215(b) and (c), concerning the scope
14 of an employment agency license, are amended to read as follows:

15 (b) No employment agent shall permit any person not mentioned in the
16 license or license application to become a member, officer, director,
17 shareholder, or partner in the conduct of the business of the employment
18 agent unless written consent of the ~~Director of the Division of Labor~~
19 Secretary of the Department of Labor and Licensing or his or her designee and
20 written consent of the surety on the bond required by this subchapter shall
21 first be obtained.

22 (c) The location of an employment agency shall not be changed without
23 written consent from the ~~Director of the Division of Labor~~ Secretary of the
24 Department of Labor and Licensing or his or her designee, and a new license
25 application shall be required for any change of office location in excess of
26 twenty-five (25) miles.

27
28 SECTION 87. Arkansas Code § 11-11-216(a)(1)(A), concerning the
29 licensing examination for certain employment licenses, is amended to read as
30 follows:

31 (a)(1)(A) Before the ~~Director of the Division of Labor~~ Secretary of
32 the Department of Labor and Licensing or his or her designee issues a license
33 to an applicant for a permanent employment agent's, permanent agency
34 manager's, or permanent counselor's license, the applicant shall be required
35 to successfully complete a written examination prepared by the ~~director~~
36 secretary or his or her designee.

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SECTION 88. Arkansas Code § 11-11-218 is amended to read as follows:
11-11-218. Temporary licenses.

(a)(1) The ~~Director of the Division of Labor~~ Secretary of the Department of Labor and Licensing or his or her designee shall have authority to issue a temporary license for operation of a private employment agency, which shall be valid for no more than ninety (90) days, upon submission by the applicant for the license of:

(A) A properly completed application form furnished and approved by the ~~director~~ secretary or his or her designee;

(B) Submission of evidence of the applicant's compliance with the bonding requirements of this subchapter; and

(C) Payment of a temporary license fee of one hundred dollars (\$100).

(2) The temporary license may be issued only if, after investigation, it reasonably appears that the applicant will meet the qualifications for a permanent private employment agency license.

(b)(1) The ~~director~~ secretary or his or her designee shall have authority to issue temporary licenses for agency managers and employment counselors, which shall be valid for no more than ninety (90) days, upon submission by the applicant for such license of:

(A) A properly completed application form, furnished and approved by the ~~director~~ secretary or his or her designee; and

(B) Payment of a temporary license fee of ten dollars (\$10.00).

(2) The temporary licenses for agency managers and employment counselors may be issued only if, after investigation, it reasonably appears that the applicant will meet the qualifications for a permanent license as agency manager or employment counselor.

(3) Temporary licenses issued to agency managers and employment counselors are nontransferable and are automatically rescinded upon suspension or termination of the employment of the agency manager or employment counselor.

(4) The ~~director~~ secretary or his or her designee shall approve or reject an application for a temporary agency manager's license or temporary employment counselor's license within five (5) days after receipt

1 of a properly completed application for the license.

2
3 SECTION 89. Arkansas Code § 11-11-219(b), concerning the renewal of
4 licenses pertaining to private employment agencies, is amended to read as
5 follows:

6 (b) Applications for renewal of all licenses provided by this
7 subchapter must be filed with the ~~Director of the Division of Labor~~ Secretary
8 of the Department of Labor and Licensing or his or her designee no later than
9 thirty (30) days prior to expiration of the license.

10
11 SECTION 90. Arkansas Code § 11-11-220(a)(2), concerning the cessation
12 of a private employment agency business by licensee, is amended to read as
13 follows:

14 (2)(A) When one (1) or more individuals, on the basis of whose
15 qualifications an agency license has been obtained, ceases to be connected
16 with the licensed business for any reason whatsoever, the agency business may
17 be carried on for a temporary period not to exceed thirty (30) days, under
18 such terms and conditions as the ~~Director of the Division of Labor~~ Secretary
19 of the Department of Labor and Licensing or his or her designee shall provide
20 by rule for the orderly closing of the business or the replacement and
21 qualification of a new member, partner, or corporate officer, director, or
22 shareholder.

23 (B) The agency's authorization to continue to do business
24 under this subchapter beyond the thirty-day period provided in this
25 subdivision (a)(2) shall be contingent upon approval by the ~~Director of the~~
26 ~~Division of Labor~~ Secretary of the Department of Labor and Licensing or his
27 or her designee of any new member, principal, partner, officer, director, or
28 shareholder.

29
30 SECTION 91. Arkansas Code § 11-11-221 is amended to read as follows:
31 11-11-221. Issuance, refusal, suspension, or revocation of license –
32 Grounds.

33 (a) The ~~Director of the Division of Labor~~ Secretary of the Department
34 of Labor and Licensing or his or her designee shall issue a license as an
35 employment agent, agency manager, or counselor to any person who qualifies
36 for the license under the terms of this subchapter.

1 (b) The ~~director~~ secretary or his or her designee may, in addition,
2 refuse to issue a license to any person or may suspend or revoke the license
3 of any employment agent, agency manager, or employment counselor or impose
4 administrative fines as provided for in § 11-11-203 when the ~~director~~
5 secretary or his or her designee finds that any of the following conditions
6 exist:

7 (1) That the employment agent, agency manager, or counselor has
8 violated any of the provisions of this subchapter;

9 (2) That the employment agent, agency manager, or counselor has
10 violated any of the rules or other orders lawfully promulgated by the
11 ~~director~~ secretary or his or her designee;

12 (3) That the employment agent, agency manager, or counselor has
13 violated the conditions of the bond required by § 11-11-213;

14 (4) That the person, employment agent, agency manager, or
15 employment counselor has engaged in a fraudulent, deceptive, or dishonest
16 practice;

17 (5) That the person, employment agent, agency manager, or
18 employment counselor has been legally adjudicated incompetent; or

19 (6) That the applicant is for good and sufficient cause unfit to
20 be an employment agent, agency manager, or employment counselor within the
21 meaning of this subchapter or of any of the rules or orders lawfully
22 promulgated by the ~~director~~ secretary or his or her designee.

23 (c) This section and § 11-11-222 shall not be construed to relieve any
24 person from civil liability or from criminal prosecution under the provisions
25 of this subchapter or under other laws of this state.

26
27 SECTION 92. Arkansas Code § 11-11-222 is amended to read as follows:
28 11-11-222. Refusal, suspension, or revocation of license – Notice of
29 hearing.

30 (a)(1) The ~~Director of the Division of Labor~~ Secretary of the
31 Department of Labor and Licensing or his or her designee may not refuse to
32 issue a license or suspend or revoke a license unless it furnishes the
33 person, employment agent, agency manager, or employment counselor with a
34 written statement of the charges against him or her and affords him or her an
35 opportunity to be heard on the charges.

36 (2) At the time that written charges are furnished to an

1 employment agency, the ~~director~~ secretary or his or her designee shall make
2 available to the agency a signed written statement by any individual having
3 filed a complaint with the ~~director~~ secretary or his or her designee relative
4 to the matter for which charges have been filed by the ~~director~~ secretary or
5 his or her designee.

6 (3) The agency shall be given at least twenty (20) days' written
7 notice of the date and time of the hearing. The notice shall conform to the
8 standards for notices set forth in the Arkansas Administrative Procedure Act,
9 § 25-15-201 et seq.

10 (4) The notice shall be sent by certified mail, return receipt
11 requested, to the address of the person as shown on his or her application
12 for license, or it may be served in the manner in which a summons is served
13 in civil cases commenced in the circuit courts of this state.

14 (b)(1) At the time and place fixed for the hearing, the ~~director~~
15 secretary or his or her designee shall hold the hearing and thereafter make
16 his or her order either dismissing the charges or refusing, suspending, or
17 revoking the license.

18 (2)(A) At the hearing, the accused shall have the right to
19 appear personally and by counsel and to cross-examine witnesses against him
20 or her.

21 (B)(i) He or she shall be allowed to produce evidence and
22 witnesses in his or her defense and shall have the right to have witnesses
23 subpoenaed.

24 (ii) The subpoenas shall be issued by the ~~director~~
25 secretary or his or her designee.

26 (c)(1) A stenographic record of all proceedings shall be made, and a
27 transcript of the proceedings shall be made if desired by the Division of
28 Labor or by the accused.

29 (2) The transcript shall be paid for by the party ordering it.

30
31 SECTION 93. Arkansas Code § 11-11-223 is amended to read as follows:
32 11-11-223. Judicial review of ~~director's~~ administrative orders.

33 (a) If the ~~Director of the Division of Labor~~ Secretary of the
34 Department of Labor and Licensing or his or her designee refuses to grant a
35 license, suspends or revokes a license that has been granted, or imposes an
36 administrative fine as provided in §§ 11-11-213, 11-11-221, and 11-11-222,

1 the person adversely affected or aggrieved by the order of the ~~director~~
2 secretary or his or her designee issued pursuant to the provisions of §§ 11-
3 11-221 and 11-11-222 may obtain a review of the order.

4 (b) The order may be brought in the circuit court in the judicial
5 district in which the violation is alleged to have occurred, where the
6 employment agent, manager, or counselor worked, or in the Pulaski County
7 Circuit Court or, if the aggrieved person is a nonresident of the state, in
8 the Pulaski County Circuit Court.

9 (c)(1) The review may be obtained by filing in the court within thirty
10 (30) days following the issuance of the order a written petition praying that
11 the order be modified or set aside.

12 (2)(A) A copy of the petition shall be forthwith transmitted by
13 the clerk of the court to the ~~Division of Labor~~ secretary or his or her
14 designee.

15 (B) Thereupon, the ~~division~~ secretary or his or her
16 designee shall file in the court the record of proceedings before the
17 division.

18 (d) Upon the filing, the court shall have jurisdiction of the
19 proceedings and of the questions determined therein and shall have power to
20 grant such temporary relief or restraining order as it deems just and proper
21 and to make and enter upon the pleadings, testimony, and proceedings set
22 forth in the record a decree affirming, modifying, or setting aside, in whole
23 or in part, the order of the ~~director~~ secretary or his or her designee and
24 enforcing the same to the extent that the order is affirmed.

25 (e) Commencement of proceedings under this section shall not, unless
26 ordered by the court, operate as a stay of the order of the ~~director~~
27 secretary or his or her designee.

28 (f)(1) No objection which has not been urged before the ~~director~~
29 secretary or his or her designee shall be considered by the court.

30 (2) The findings of the ~~director~~ secretary or his or her
31 designee with respect to questions of fact, if supported by substantial
32 evidence on the record considered as a whole, shall be conclusive.

33 (g)(1) If any party shall apply to the court for leave to adduce
34 additional evidence and shall show to the satisfaction of the court that the
35 additional evidence is material and that there were reasonable grounds for
36 the failure to adduce the evidence in the hearing before the ~~director~~

1 secretary or his or her designee, the court may order the additional evidence
2 to be taken before the ~~director~~ secretary or his or her designee and made a
3 part of the record.

4 (2)(A) The ~~director~~ secretary or his or her designee may modify
5 his or her findings as to the facts or make new findings, by reason of
6 additional evidence so taken and filed, and the ~~director~~ secretary or his or
7 her designee shall file the modified or new findings with the court.

8 (B) The findings with respect to questions of fact, if
9 supported by substantial evidence on the record considered as a whole, shall
10 be conclusive.

11 (h) Upon the filing of the record with it, the jurisdiction of the
12 court shall be exclusive, and its judgment and decree shall be final, except
13 that it shall be subject to review by the Supreme Court.

14 (i)(1) The ~~division~~ secretary or his or her designee shall certify the
15 record of its proceedings if the party commencing the proceedings shall pay
16 to it the cost of preparing and certifying the records, including the
17 recording and transcribing of all testimony introduced in the proceedings.

18 (2) If payment of the costs of preparing and certifying the
19 records, including the recording and transcribing of all testimony introduced
20 in the proceedings, is not made by the party commencing the proceedings for
21 review within ten (10) days after notice from the ~~division~~ secretary or his
22 or her designee of the cost of preparing and certifying the record, the
23 circuit court in which the proceeding is pending, on motion of the ~~director~~
24 secretary or his or her designee, shall dismiss the petition.

25
26 SECTION 94. Arkansas Code § 11-11-227(c)(1), concerning fee
27 restrictions and requirements pertaining to private employment agencies, is
28 amended to read as follows:

29 (c)(1) When a dispute concerning a fee exists, the Division of Labor
30 may conduct an investigation to determine all of the facts concerning the
31 dispute. Thereafter, the ~~Director of the Division of Labor~~ Secretary of the
32 Department of Labor and Licensing or his or her designee shall issue a
33 decision and order resolving the dispute.

34
35 SECTION 95. Arkansas Code §11-12-104(b), concerning restrictions on the
36 employment of children in the entertainment industry, is amended to read as

1 follows:

2 (b) No child under sixteen (16) years of age may be employed in the
3 entertainment industry:

4 (1) In a role or in an environment deemed to be hazardous or
5 detrimental to the health, morals, education, or welfare of the child as
6 determined by the ~~Director of the Division of Labor~~ Secretary of the
7 Department of Labor and Licensing or his or her designee;

8 (2) When the child is required to use a dressing room that is
9 simultaneously occupied by an adult or by other children of the opposite sex;

10 (3) When the child is not provided with a suitable place to rest
11 or play;

12 (4) When the parent or guardian of the child is prevented from
13 being present at the scene of employment during all the times the child is
14 working;

15 (5) When the parent or guardian of the child is prevented from
16 being within sight and sound of the child; and

17 (6) Without a permit issued by the ~~director~~ secretary or his or
18 her designee and the written consent of the child's parent or guardian for
19 the issuance of the permit.

20

21 SECTION 96. Arkansas Code § 11-12-105 is amended to read as follows:

22 11-12-105. Implementation and enforcement.

23 The ~~Director of the Division of Labor~~ Secretary of the Department of
24 Labor and Licensing shall have the authority to:

25 (1) Promulgate rules for the implementation of this chapter;

26 (2) Suspend or revoke a permit for the employment of a child in
27 the entertainment industry for cause;

28 (3) Enter or authorize his or her representative to enter and
29 inspect any place of employment where children work, rest, or play; and

30 (4) Otherwise enforce and implement the provisions of this
31 chapter.

32

33 SECTION 97. Arkansas Code § 11-14-112 is amended to read as follows:

34 11-14-112. Rating plans based on drug-free workplace program
35 participation.

36 The Insurance Commissioner shall approve rating plans for workers'

1 compensation insurance that give specific identifiable consideration in the
2 setting of rates to employers that implement a drug-free workplace program
3 pursuant to rules adopted by the Workers' Health and Safety Division. The
4 plans ~~must take effect January 1, 2000,~~ must be actuarially sound, and must
5 state the savings anticipated to result from the drug testing. The credit
6 shall be at least five percent (5%) unless the Insurance Commissioner
7 determines that five percent (5%) is actuarially unsound. The Insurance
8 Commissioner is also authorized to develop a schedule of premium credits for
9 workers' compensation insurance for employers who have safety programs that
10 attain certain criteria for safety programs. The Insurance Commissioner shall
11 consult with the ~~Director of the Division of Labor~~ Secretary of the
12 Department of Labor and Licensing or his or her designee in setting such
13 criteria.
14

15 SECTION 98. Arkansas Code § 17-28-103 is amended to read as follows:
16 17-28-103. Disposition of funds.

17 All funds received by the Board of Electrical Examiners of the State of
18 Arkansas under the provisions of this chapter shall be deposited as special
19 revenues into the State Treasury to the credit of the Department of Labor and
20 Licensing Special Fund, there to be used by the ~~Division of Labor~~ Department
21 of Labor and Licensing in carrying out the functions, powers, and duties as
22 set out in this chapter and to defray the costs of the maintenance,
23 operation, and improvements required by the ~~division~~ department in carrying
24 out the functions, powers, and duties otherwise imposed by law on the
25 ~~division~~ department or the ~~Director of the Division of Labor~~ Secretary of the
26 Department of Labor and Licensing or his or her designee.
27

28 SECTION 99. Arkansas Code § 20-23-103 is amended to read as follows:
29 20-23-103. Enforcement.

30 (a) The criminal penalties provided by this chapter shall be enforced
31 by the prosecuting attorney of each judicial district. The administrative
32 penalties provided by this chapter shall be imposed pursuant to rules of the
33 ~~Director of the Division of Labor~~ Secretary of the Department of Labor and
34 Licensing or his or her designee.

35 (b) The ~~director~~ secretary or his or her designee may collect an
36 administrative penalty imposed pursuant to this chapter in a civil action in

1 a court of competent jurisdiction, and he or she shall not be required to pay
2 costs or to enter a bond for payment of costs.

3
4 SECTION 100. Arkansas Code § 20-23-104(a), concerning continuous
5 monitoring pertaining to boiler safety, is amended to read as follows:

6 (a)(1) All boilers subject to the provisions of this chapter shall be
7 continuously monitored by mechanical and electronic devices approved by the
8 ~~Director of the Division of Labor~~ Secretary of the Department of Labor and
9 Licensing or his or her designee.

10 (2) When a plant is in operation or when any public building is
11 occupied, the boilers shall be under regular attendance by a boiler operator
12 unless otherwise exempt.

13
14 SECTION 101. Arkansas Code § 20-23-105 is amended to read as follows:
15 20-23-105. Disposition of funds.

16 (a) All money received under this chapter shall be paid to the
17 Treasurer of State, who shall place this money to the credit of the
18 Department of Labor and Licensing Special Fund, there to be used by the
19 Department of Labor and Licensing in carrying out the functions, powers, and
20 duties as set out in this chapter and to defray the costs of the maintenance,
21 operation, and improvements required by the department in carrying out the
22 functions, powers, and duties otherwise imposed by law on the department or
23 the ~~Director of the Division of Labor~~ Secretary of the Department of Labor
24 and Licensing or his or her designee.

25 (b) The ~~director~~ secretary or his or her designee may issue vouchers
26 for salaries and expenses of the Boiler Inspection Division when proper
27 appropriation has been made for the expenditures.

28
29 SECTION 102. Arkansas Code § 20-23-202(a) and (b), concerning boiler
30 inspectors pertaining to boiler safety, are amended to read as follows:

31 (a)(1) When the office of Chief Inspector of the Boiler Inspection
32 Division becomes vacant, the ~~Director of the Division of Labor~~ Secretary of
33 the Department of Labor and Licensing or his or her designee shall employ a
34 citizen of the State of Arkansas to be chief inspector.

35 (2) The chief inspector shall have at the time of employment not
36 less than ten (10) years' experience in the construction, maintenance,

1 installation, and repair or inspection of high pressure boilers and unfired
2 pressure vessels.

3 (b)(1)(A) The ~~director~~ secretary or his or her designee is authorized
4 and empowered to employ a technical assistant and deputy inspectors of
5 boilers.

6 (B) Inspectors of steam boilers and unfired pressure
7 vessels shall have had at the time of employment not less than five (5)
8 years' experience in the construction, maintenance, installation, and repair
9 of high pressure boilers and unfired pressure vessels or possess a currently
10 valid commission from the National Board of Boiler and Pressure Vessel
11 Inspectors.

12 (C)(i) Inspectors of steam boilers and unfired pressure
13 vessels also shall have passed a written examination.

14 (ii) The examination shall conform to standards not
15 exceeding those prescribed by the Boiler and Pressure Vessel Code of the
16 American Society of Mechanical Engineers.

17 (iii) The examination shall test the inspector's
18 knowledge of the construction, installation, maintenance, and repair of
19 boilers and their appurtenances.

20 (2) The ~~director~~ secretary or his or her designee is also
21 empowered to employ clerical and administrative employees, as well as other
22 inspectors, as necessary to perform the work of the Boiler Inspection
23 Division.

24 (3) The salaries are to be approved by the General Assembly.
25

26 SECTION 103. Arkansas Code § 20-23-203(c), concerning a chief
27 inspector's duty to inspect and enforce pertaining to boiler safety, is
28 amended to read as follows:

29 (c)(1) The chief inspector shall enforce the laws of the state
30 governing the use of boilers and unfired pressure vessels. He or she shall
31 examine into and report to the ~~Director of the Division of Labor~~ Secretary of
32 the Department of Labor and Licensing or his or her designee the causes of
33 boiler explosions which occur within the state.

34 (2) He or she shall keep in his or her office a complete and
35 accurate record of the names of all owners or operators of boilers inspected
36 by the Boiler Inspection Division, together with the location, make, type,

1 dimensions, age, condition, pressure allowed upon, and date of the last
2 inspection of all boilers and shall make an annual report thereon to the
3 ~~director~~ secretary or his or her designee.

4
5 SECTION 104. Arkansas Code § 20-23-301 is amended to read as follows:

6 20-23-301. Certificate of inspection required – Application of rules
7 and standards – Penalties.

8 (a)(1) No owner or user of a boiler or pressure vessel or engineer or
9 fireman in charge of a boiler or pressure vessel shall operate or allow the
10 boiler or pressure vessel to be operated without a certificate of inspection
11 issued by the ~~Director of the Division of Labor~~ Secretary of the Department
12 of Labor and Licensing or his or her designee or shall allow a greater
13 pressure in the boiler or pressure vessel than is allowed by the certificate
14 of inspection.

15 (2)(A) All boilers and pressure vessels installed or in
16 operation in this state shall conform to those rules and standards that shall
17 from time to time be adopted by the Boiler Inspection Division with the
18 approval of the ~~director~~ secretary or his or her designee.

19 (B) The rules and standards shall not exceed those set out
20 in the several sections of the Boiler and Pressure Vessel Code of the
21 American Society of Mechanical Engineers and shall have the force of law
22 immediately upon their approval by the ~~director~~ secretary or his or her
23 designee.

24 (3) No person shall operate or cause to be operated any boiler
25 or unfired pressure vessel on which the certificate of inspection has been
26 suspended or the operation of which has been forbidden by an inspector as
27 provided in §§ 20-23-203, 20-23-306, 20-23-310, 20-23-401, and 20-23-402.

28 (4)(A) All pressure piping installed in this state shall conform
29 to those rules and standards that shall from time to time be adopted by the
30 Boiler Inspection Division with the approval of the ~~director~~ secretary or his
31 or her designee.

32 (B) The rules and standards shall not exceed those set out
33 in the American Society of Mechanical Engineers Code for Pressure Piping,
34 Power Piping Code, B31.1.

35 (b) Any person violating this section shall be subject to an
36 administrative fine of not less than twenty-five dollars (\$25.00) nor more

1 than one thousand dollars (\$1,000).

2

3 SECTION 105. Arkansas Code § 20-23-306(a)(1), concerning the issuance
4 of a certificate of inspection to a boiler or pressure vessel owner, is
5 amended to read as follows:

6 (a)(1) Upon receipt by the Boiler Inspection Division of an annual or
7 biennial certificate report of inspection from a state inspector or from an
8 inspector employed by an insurance company that a boiler or pressure vessel
9 is in safe working condition with the required fittings, valves, and
10 appliances properly installed and set, the ~~Director of the Division of Labor~~
11 Secretary of the Department of Labor and Licensing or his or her designee
12 shall issue to the owner of the boiler or pressure vessel a certificate of
13 inspection.

14

15 SECTION 106. Arkansas Code § 20-23-311(b), concerning boiler
16 inspection fees, is amended to read as follows:

17 (b) The rates in subsection (a) of this section may be reduced by the
18 ~~Director of the Division of Labor~~ Secretary of the Department of Labor and
19 Licensing or his or her designee at the beginning of any fiscal year if the
20 rates produce a greater amount of revenue than is required to defray the cost
21 of operation of the Boiler Inspection Division.

22

23 SECTION 107. Arkansas Code § 20-23-311(d), concerning failure to pay a
24 boiler inspection fee, is amended to read as follows:

25 (d) If the owner, user, or agent of the owner shall fail to pay any
26 inspection fee under this section within thirty (30) days, a civil money
27 penalty equal to the amount of the unpaid fee shall attach to the outstanding
28 amount of the fee, and the ~~director~~ secretary or his or her designee shall be
29 empowered to collect this penalty in addition to the amount of the fee.

30

31 SECTION 108. Arkansas Code § 20-23-312(a)(1), concerning the
32 collection of boiler inspection fees, is amended to read as follows:

33 (a)(1) In addition to other remedies provided for by this chapter, if
34 after the making of any inspection or accrual of any charge or penalty
35 required or authorized by this chapter, the fee, penalty, or charge is not
36 paid within thirty (30) days after demand upon whoever is liable therefor,

1 the ~~Director of the Division of Labor~~ Secretary of the Department of Labor
2 and Licensing or his or her designee may employ an attorney, who is empowered
3 without payment of costs or giving of bond for costs to institute suit in the
4 name of the State of Arkansas in any court of competent jurisdiction to
5 collect the fees, penalties, costs, and charges.

6
7 SECTION 109. Arkansas Code § 20-23-314(b)(1), concerning pressure
8 piping inspections, is amended to read as follows:

9 (b)(1) Upon completion of the installation of any pressure piping, a
10 final inspection shall be made, and the inspector shall complete a final
11 inspection report on a form approved by the ~~Director of the Division of Labor~~
12 Secretary of the Department of Labor and Licensing or his or her designee.

13
14 SECTION 110. Arkansas Code § 20-23-407 is amended to read as follows:
15 20-23-407. Owner or user inspector programs.

16 (a) Any owner or user of a steam boiler or pressure vessel subject to
17 this chapter may perform any inspections required by this chapter on such
18 vessels owned or operated by the owner or user if the owner or user meets the
19 requirements prescribed by rule of the ~~Director of the Division of Labor~~
20 Secretary of the Department of Labor and Licensing or his or her designee.

21 (b) The ~~director~~ secretary or his or her designee shall set out
22 requirements for the certification of owner or user inspectors and
23 certification of owner or user inspection programs by rule and shall have
24 full authority to promulgate and enforce those rules.

25 (c)(1)(A) After notice and opportunity for hearing, any owner or user
26 who is found to have violated rules prescribed by the ~~director~~ secretary or
27 his or her designee pursuant to this subchapter shall be assessed a civil
28 monetary penalty of not less than one hundred dollars (\$100) or more than
29 five thousand dollars (\$5,000).

30 (B) Each day that a violation continues shall be
31 considered a separate violation.

32 (2) The ~~director~~ secretary or his or her designee may bring a
33 civil action in a court of competent jurisdiction to recover the amount of
34 any civil monetary penalties.

35 (d) In addition to civil monetary penalties, any owner or user who is
36 found to be in violation of this section shall be guilty of a Class A

1 misdemeanor.

2

3 SECTION 111. Arkansas Code § 20-27-901(2)(A), concerning definitions
4 pertaining to safety glazing materials, is amended to read as follows:

5 (2)(A) "Hazardous locations" means those areas in residential,
6 commercial, and public buildings where the use of other than safety glazing
7 materials would constitute a hazard as the ~~Director of the Division of Labor~~
8 Secretary of the Department of Labor and Licensing or his or her designee may
9 determine after notice and hearings as are now required by law.

10

11 SECTION 112. Arkansas Code § 20-27-1102 is amended to read as follows:
12 20-27-1102. Rules – Enforcement – Administration.

13 (a) The ~~Director of the Division of Labor~~ Secretary of the Department
14 of Labor and Licensing or his or her designee shall promulgate rules to
15 establish minimum standards for the qualifications of those individuals
16 performing blasting in Arkansas.

17 (b) The ~~director~~ secretary or his or her designee shall implement,
18 enforce, and administer this subchapter and the rules adopted pursuant to
19 this subchapter.

20 (c) Rules under this section shall be adopted pursuant to the Arkansas
21 Administrative Procedure Act, § 25-15-201 et seq.

22 (d)(1) The ~~director~~ secretary or his or her designee may establish by
23 rule fees for certifying individuals as qualified to perform blasting in
24 Arkansas.

25 (2) The fees shall not exceed the sum of thirty dollars (\$30.00)
26 per applicant.

27

28 SECTION 113. Arkansas Code § 20-27-1303 is amended to read as follows:
29 20-27-1303. Blasting Standards.

30 (a) Blasting shall be conducted to prevent injury to persons, damage
31 to public or private property, adverse impact on any underground mine, and
32 change in the course, channel, or availability of surface or ground water
33 outside the mine's perimeter.

34 (b)(1) In blasting operations, airblast shall not exceed the maximum
35 limits set forth in 30 C.F.R. § 816.67(b), at the location of any structure,
36 residence, public building, school, church, or commercial or institutional

1 building outside the perimeter of a mine and owned or leased by a person
2 other than the mine owner or operator.

3 (2)(A) If necessary to prevent damage, the ~~Director of the~~
4 Division of Labor Secretary of the Department of Labor and Licensing or his
5 or her designee may require lower maximum allowable airblast levels than
6 those specified in subdivision (b)(1) of this section for use in the vicinity
7 of a specific blasting operation.

8 (B) Such an action shall only be taken following
9 consultation with whatever expert or experts the ~~director~~ secretary or his or
10 her designee deems appropriate.

11 (3)(A) The ~~director~~ secretary or his or her designee may require
12 airblast measurement of any or all blasts and may specify the locations at
13 which such measurements are taken.

14 (B) The measuring system shall have an upper-end flat
15 frequency response of at least two hundred hertz (200 Hz). The measuring
16 system shall also have a low-end frequency response of two hertz (2 Hz) and
17 be within minus three decibels (-3 dB) at two hertz (2 Hz).

18 (c)(1) Flyrock from blasting operations, traveling in the air or along
19 the ground, should not be cast from the mine site.

20 (2) In the event that flyrock is cast from the mine site, the
21 owner or operator and contractor shall be liable and responsible for any
22 damages, including cleanup and removal of the flyrock.

23 (d)(1)(A) In blasting operations, ground vibration shall not exceed
24 the maximum limits established in accordance with either the maximum peak
25 particle velocity limits contained in 30 C.F.R. § 816.67(d)(2), or the
26 scaled-distance equation established at 30 C.F.R. § 816.67(d)(3), at the
27 location of any structure, residence, public building, school, church, or
28 commercial or institutional building outside the perimeter of a mine and
29 owned or leased by a person other than the mine owner or operator.

30 (B) If a seismographic record for a blast exists or is
31 required, the maximum limit for ground vibration shall be the peak particle
32 velocity limits contained in 30 C.F.R. § 816.67(d)(2), at any structure,
33 residence, public building, school, church, or commercial or institutional
34 building.

35 (2)(A) If necessary to prevent damage, the ~~director~~ secretary or
36 his or her designee may require lower maximum allowable ground vibration

1 levels than those specified in subdivision (d)(1) of this section for use in
2 the vicinity of a specific blasting operation.

3 (B) Such action shall only be taken following consultation
4 with whatever expert or experts the ~~director~~ secretary or his or her designee
5 deems appropriate.

6 (3) The ~~director~~ secretary or his or her designee may require an
7 owner or operator to conduct seismic monitoring of any blasts or may specify
8 the location at which the measurements are taken and the degree of detail
9 necessary in the measurement.

10 (e)(1) The maximum limits for airblast and ground vibration as
11 specified in subdivisions (b)(1) and (d)(1) of this section shall be
12 construed as the threshold below which blasting damage is unlikely to occur.
13 However, the ~~director~~ secretary or his or her designee shall have the
14 authority to promulgate rules requiring more or less restrictive limits, as
15 appropriate.

16 (2) Such an action shall only be taken following consultation
17 with whatever expert or experts the ~~director~~ secretary or his or her designee
18 deems appropriate.

19 (f)(1) If a pit or quarry is closer than three hundred feet (300') from
20 any public highway, road, or street, no blasting shall be conducted without
21 the prior written approval of the ~~director~~ secretary or his or her designee.

22 (2) Notwithstanding subdivision (f)(1) of this section, any
23 quarry or pit in existence on July 1, 1995, shall be allowed to continue
24 operations without obtaining the written approval of the ~~director~~ secretary
25 or his or her designee.

26 (g)(1) All blasting operations shall be conducted between sunrise and
27 sunset, unless extraordinary circumstances arise which would necessitate
28 conducting a blast outside these hours.

29 (2) Such circumstances shall be documented in the blast records
30 required by § 20-27-1305.

31 (h)(1) Before the firing of a blast, the owner or operator or
32 contractor shall follow a definite plan of warning signals that can be
33 clearly seen or heard by anyone in the blasting area.

34 (2) The owner or operator shall inform all employees at the
35 operation as to the established procedure.

36

1 SECTION 114. Arkansas Code § 20-27-1304 is amended to read as follows:
2 20-27-1304. Notice of blasting operations.

3 (a)(1) Any owner or operator and contractor conducting blasting
4 operations in this state on July 1, 1995, shall notify the ~~Director of the~~
5 ~~Department of Labor~~ Secretary of the Department of Labor and Licensing or his
6 or her designee of each site or location on which blasting operations are
7 conducted.

8 (2) Such notice shall be filed with the Department of Labor and
9 Licensing no later than October 1, 1995.

10 (b) Any owner or operator and contractor which, after July 1, 1995,
11 begins blasting at a new site or location, or at a site on which no blasting
12 has occurred for a period of six (6) consecutive months, shall notify the
13 ~~director~~ secretary or his or her designee of its operation at least twenty-
14 four (24) hours in advance of the initial blast.

15 (c) The notice required by subsections (a) and (b) of this section
16 shall be on a form approved by the ~~director~~ secretary or his or her designee
17 and shall include, but not be limited to, the following information:

18 (1) The name, address, and telephone number of the mine owner or
19 operator;

20 (2) The name, address, and telephone number of the operator or
21 contractor performing the blast;

22 (3) The location of the quarry site or open pit mine; and

23 (4) The location where the records of the blasting operations
24 are to be maintained.

25 (d) All owners and operators and contractors shall notify the ~~director~~
26 secretary or his or her designee in writing of any change of address or
27 location.

28

29 SECTION 115. Arkansas Code § 20-27-1306(b), concerning insurance under
30 the Arkansas Quarry and Open Pit Mine Blasting Control Act, is amended to
31 read as follows:

32 (b) Proof of such coverage shall be made available to the ~~Director of~~
33 ~~the Division of Labor~~ Secretary of the Department of Labor and Licensing or
34 his or her authorized representative upon request.

35

36 SECTION 116. Arkansas Code § 20-27-1307(b), concerning exemptions

1 under the Arkansas Quarry and Open Pit Mine Blasting Control Act, is amended
2 to read as follows:

3 (b) Notwithstanding subsection (a) of this section, the authority of
4 the ~~Director of the Division of Labor~~ Secretary of the Department of Labor
5 and Licensing or his or her designee shall not be restricted with respect to:

6 (1) Mines or quarries which were in existence and operation on
7 July 1, 1995, but which change owners or operators after July 1, 1995; or

8 (2) New or existing mines or quarries which were not in operation
9 on July 1, 1995.

10

11 SECTION 117. Arkansas Code § 20-27-1308 is amended to read as follows:
12 20-27-1308. ~~Director~~— Powers and duties generally.

13 (a) In addition to other powers and authority provided by law, the
14 ~~Director of the Division of Labor~~ Secretary of the Department of Labor and
15 Licensing or his or her authorized representative shall have the following
16 authority:

17 (1) To promulgate rules for the administration and enforcement
18 of this subchapter after public hearing and opportunity for public comment;

19 (2) To establish by rule standards for the performance of
20 blasting operations at mines after public hearing and opportunity for public
21 comment;

22 (3) To investigate as to any violation of this subchapter or any
23 rule or order issued under this subchapter;

24 (4) To administer oaths, take or cause to be taken the
25 depositions of witnesses, and require by subpoena the attendance and
26 testimony of witnesses and the production of all records and other evidence
27 relative to any matter under investigation or hearing;

28 (5) To enter and inspect during normal business hours any mine,
29 any place of business of a mine owner or operator, or any place of business
30 of any contractor engaged in blasting operations at any mine for the purpose
31 of ascertaining compliance with this subchapter and any rule or order issued
32 under this subchapter. This right of entry includes the right to examine,
33 inspect, and copy any appropriate records and to question any employees;

34 (6) To issue cease and desist orders, as well as orders
35 directing that affirmative measures be taken to comply with this subchapter
36 and any rule issued under this subchapter;

1 (7) To require, at his or her discretion, a mine owner or
2 operator or contractor to offer a pre-blast survey of all buildings or
3 structures up to a radius of one-half ($\frac{1}{2}$) of a mile of the perimeter of the
4 mine before the initiation of blasting or the continuation of blasting under
5 such terms and conditions as may be established by order of the ~~director~~
6 secretary or his or her designee;

7 (8) To require, at his or her discretion, a mine owner or
8 operator or contractor to develop and submit a blasting plan for approval;

9 (9) To require, at his or her discretion, a mine owner or
10 operator or contractor to monitor and measure air blasts or ground vibration,
11 or both, under such terms and conditions as may be established by order of
12 the ~~director~~ secretary or his or her designee or to conduct such monitoring
13 and measuring through his or her authorized representative;

14 (10) To issue a variance from any specific requirement of this
15 subchapter or any rule issued under this subchapter, provided that literal
16 compliance would constitute an undue hardship and that reasonable safety of
17 persons and property is secured;

18 (11) To certify to official acts;

19 (12) To assess civil penalties as provided in § 20-27-1313; and

20 (13) To enforce generally this subchapter and the rules and
21 orders issued under this subchapter.

22 (b) In determining whether to order a pre-blast survey or whether to
23 order monitoring and measurement of air blasts and ground vibration, the
24 ~~director~~ secretary or his or her designee may consider the nature of any
25 written complaints made against that owner or operator or contractor or any
26 written complaints about that specific mine location, as well as the number
27 and frequency of such complaints.

28 (c) In case of failure of any person to comply with any subpoena
29 lawfully issued under this section or upon the refusal of any witness to
30 produce evidence or to testify to any matter regarding which he or she may be
31 lawfully interrogated, it shall be the duty of any circuit court or judge
32 thereof, upon application of the Division of Labor, to compel obedience by
33 proceedings for contempt, as in the case of disobedience of the requirements
34 of a subpoena issued by the court or a refusal to testify therein.

35
36 SECTION 118. Arkansas Code § 20-27-1309(a), concerning hearings under

1 the Arkansas Quarry and Open Pit Mine Blasting Control Act, is amended to
2 read as follows:

3 (a) All hearings conducted by the ~~Director of the Division of Labor~~
4 Secretary of the Department of Labor and Licensing or his or her designee and
5 all orders, notices, and assessments shall conform to the requirements of the
6 Arkansas Administrative Procedure Act, § 25-15-201 et seq.

7

8 SECTION 119. Arkansas Code § 20-27-1309(c)(1), concerning
9 administrative orders under the Arkansas Quarry and Open Pit Mine Blasting
10 Control Act, is amended to read as follows:

11 (c)(1) Any administrative order issued by the ~~director~~ secretary or
12 his or her designee shall be final, unless within twenty (20) days after
13 service of notice thereof, the person charged with the violation or any
14 complainant entitled to such notice notifies the ~~director~~ secretary or his or
15 her designee in writing that the order is contested.

16

17 SECTION 120. Arkansas Code § 20-27-1310(a), concerning cooperation
18 with State Fire Marshal under the Arkansas Quarry and Open Pit Mine Blasting
19 Control Act, is amended to read as follows:

20 (a) The ~~Director of the Division of Labor~~ Secretary of the Department
21 of Labor and Licensing or his or her designee shall consult the State Fire
22 Marshal regarding the adoption of any rules.

23

24 SECTION 121. Arkansas Code § 20-27-1311(b), concerning orders under
25 the Arkansas Quarry and Open Pit Mine Blasting Control Act, is amended to
26 read as follows:

27 (b) All orders entered, permits granted, and pending legal proceedings
28 instituted by any person, public or private, relating to subjects embraced
29 within this subchapter shall remain unimpaired and in full force and effect
30 until superseded by actions taken by the ~~Director of the Division of Labor~~
31 Secretary of the Department of Labor and Licensing or his or her designee
32 under this subchapter.

33

34 SECTION 122. Arkansas Code § 20-27-1313 is amended to read as follows:
35 20-27-1313. Civil penalties.

36 (a)(1) Any person who violates any provision of this subchapter or who

1 violates any rule or order issued under this subchapter may be assessed an
2 administrative civil penalty by the ~~Director of the Division of Labor~~
3 Secretary of the Department of Labor and Licensing or his or her designee in
4 an amount not to exceed ten thousand dollars (\$10,000) per violation.

5 (2) Each day of a continuing violation may be deemed a separate
6 violation for purposes of penalty assessment.

7 (b)(1) Assessment of a civil penalty by the ~~director~~ secretary or his
8 or her designee shall be made no later than three (3) years from the date of
9 the occurrence of the violation.

10 (2)(A) In his or her discretion, the ~~director~~ secretary or his
11 or her designee may accept payment of assessed civil penalties in
12 installments.

13 (B) The assessment by the ~~director~~ secretary or his or her
14 designee shall be final, unless, within twenty (20) days after service of
15 notice thereof by certified mail, the person charged with the violation or
16 any complainant entitled to such notice notifies the ~~director~~ secretary or
17 his or her designee in writing that the proposed assessment is contested.

18 (C) If an assessment is contested, a final administrative
19 determination shall be made pursuant to the Arkansas Administrative Procedure
20 Act, § 25-15-201 et seq.

21 (c) When finally determined, the amount of any assessment may be
22 recovered in a civil action brought by the ~~director~~ secretary or his or her
23 designee in a court of competent jurisdiction without paying costs or giving
24 bond for costs.

25 (d)(1) Sums collected as reimbursement for expenses, costs, and
26 damages to the Division of Labor shall be deposited into the operating fund
27 of the division.

28 (2) Sums collected as civil penalties shall be deposited into
29 the General Revenue Fund Account of the State Apportionment Fund.

30 (e) Notice of any assessment by the ~~director~~ secretary or his or her
31 designee shall be served on any person who has made a written complaint
32 within the past three (3) years to the division regarding the blasting
33 operations of the person charged with the violation.

34
35 SECTION 123. Arkansas Code § 20-27-1314 is amended to read as follows:
36 20-27-1314. Restraint

1 In addition to the civil penalty provided in § 20-27-1313, the ~~Director~~
2 ~~of the Division of Labor~~ Secretary of the Department of Labor and Licensing
3 or his or her designee may petition any court of competent jurisdiction
4 without paying costs or giving bond for costs to:

5 (1)(A) Enjoin or restrain any violation of or compel compliance with
6 this subchapter and any rules or orders issued under this subchapter.

7 (B) In situations in which there is an imminent threat to public
8 or worker safety or to property, the ~~director~~ secretary or his or her
9 designee may seek a temporary restraining order for the cessation of any
10 blasting;

11 (2) Affirmatively order that such remedial measures be taken as may be
12 necessary or appropriate to implement or effectuate the purposes and intent
13 of this subchapter; and

14 (3) Recover all costs, expenses, and damages to the Division of Labor
15 and any other agency or subdivision of the state in enforcing or effectuating
16 this subchapter.

17
18 SECTION 124. Arkansas Code § 20-31-105(c), concerning compliance with
19 the Arkansas Electrical Code Authority Act, is amended to read as follows:

20 (c) In addition to the penalties in subsection (b) of this section,
21 the ~~Director of the Department of Labor~~ Secretary of the Department of Labor
22 and Licensing or his or her designee is authorized:

23 (1) To petition any court of competent jurisdiction to enjoin or
24 restrain any person or electrician who does any construction, installation,
25 and maintenance of electrical facilities or performs electrical work without
26 an exemption or who otherwise violates this chapter; and

27 (2) To seek the suspension or revocation by the Board of
28 Electrical Examiners of the State of Arkansas of any “electrical contractor”,
29 a “master electrician”, a “journeyman electrician”, or an “industrial
30 maintenance electrician” licensed under § 17-28-101 et seq. who is found to
31 be in violation of this chapter.

32
33 SECTION 125. Arkansas Code § 23-89-504 is amended to read as follows:
34 23-89-504. Safety inspection and insurance required – Enforcement –
35 Violations.

36 (a) It is unlawful for any person or entity to operate an amusement

1 attraction or amusement ride unless the person or entity maintains liability
2 insurance in the minimum amount required by this subchapter at all times
3 during the operation of the amusement attraction or amusement ride in the
4 state and unless the person has a current safety inspection report made at
5 the time of set-up of the amusement attraction or amusement ride, but before
6 use by the public.

7 (b)(1) The ~~Director of the Division of Labor~~ Secretary of the
8 Department of Labor and Licensing or his or her designee may conduct
9 examinations and investigations into the affairs of any person or entity
10 subject to the provisions of this subchapter for the purpose of determining
11 compliance with the provisions of this subchapter.

12 (2) The ~~Director of the Division of Labor~~ secretary or his or
13 her designee shall administer and enforce the provisions of this subchapter.

14 (3) The ~~Director of the Division of Labor~~ secretary or his or
15 her designee shall promulgate rules for the proper administration and
16 enforcement of this subchapter, including rules establishing minimum safety
17 requirements for the operation and maintenance of amusement rides and
18 amusement attractions.

19 (4) The ~~Director of the Division of Labor~~ secretary or his or
20 her designee shall employ amusement ride inspectors certified by the National
21 Association of Amusement Ride Safety Officials.

22 (c) If the ~~Director of the Division of Labor~~ secretary or his or her
23 designee finds that an operator or owner has failed to comply with the
24 provisions of this subchapter, he or she may order the operator or owner to
25 immediately cease operating the amusement attraction or amusement ride and
26 may impose upon the operator or owner an administrative penalty of not more
27 than ten thousand dollars (\$10,000).

28 (d)(1) If the ~~Director of the Division of Labor~~ secretary or his or
29 her designee finds that an operator or owner failed to comply with the
30 provisions of this subchapter, he or she shall so inform the prosecuting
31 attorney in whose district any purported violation may have occurred.

32 (2)(A) Upon conviction, the operator or owner shall be guilty of
33 a Class A misdemeanor.

34 (B) Upon conviction of a knowing violation, the operator
35 or owner shall be guilty of a Class D felony.

36 (3) Each day of violation shall constitute a separate offense.

1 (e) The ~~Director of the Division of Labor~~ secretary or his or her
2 designee shall have authority to bring a civil action in any court of
3 competent jurisdiction, without payment of costs or giving bond for costs, to
4 recover any administrative penalty imposed pursuant to this subchapter or to
5 recover any delinquent fees owed pursuant to this subchapter.

6 (f) The ~~Director of the Division of Labor~~ secretary or his or her
7 designee and his or her deputies, assistants, examiners, and employees and
8 the Director of the Division of Arkansas State Police and his or her
9 deputies, officers, assistants, and employees and any public law enforcement
10 officer shall not be liable for any damages occurring as a result of the
11 implementation of this subchapter.

12
13 SECTION 126. Arkansas Code § 23-89-505(c), concerning notice of
14 amusement ride operations required under the Amusement Ride and Amusement
15 Attraction Safety Insurance Act, is amended to read as follows:

16 (c)(1) Any person or entity intending to operate an amusement
17 attraction or amusement ride in this state shall notify the ~~Director of the~~
18 ~~Division of Labor~~ Secretary of the Department of Labor and Licensing or his
19 or her designee of such intent and shall notify the ~~director~~ secretary or his
20 or her designee of the location, dates, and times of intended operation.

21 (2) The notice must be made to the ~~director~~ secretary or his or
22 her designee four (4) days prior to intended operation, excluding Saturdays,
23 Sundays, or any legal holidays.

24
25 SECTION 127. Arkansas Code § 23-89-505(d), concerning safety
26 inspections, notice, and insurance required under the Amusement Ride and
27 Amusement Attraction Safety Insurance Act, is amended to read as follows:

28 (d) Any person or entity failing to comply with subsection (c) of this
29 section shall be subject to an administrative penalty issued by the ~~director~~
30 secretary or his or her designee of no more than five thousand dollars
31 (\$5,000) in addition to other penalties, both administrative and criminal,
32 contained in this subchapter.

33
34 SECTION 128. Arkansas Code § 23-89-506 is amended to read as follows:
35 23-89-506. Inspections and fees.

36 (a)(1) The ~~Director of the Division of Labor~~ Secretary of the

1 Department of Labor and Licensing or his or her designee is authorized to
2 inspect each person or entity to ensure compliance with this subchapter.

3 (2) Two (2) times per calendar year, the ~~director~~ secretary or
4 his or her designee shall inspect all permanently placed operational
5 amusement rides or amusement attractions located in this state being operated
6 for profit or charity.

7 (3) All portable amusement rides or amusement attractions shall
8 be inspected by the ~~director~~ secretary or his or her designee every time they
9 are moved to a new location in Arkansas and before they are permitted to
10 commence operation or open to the public.

11 (4)(A) Inflatable attractions, self-contained mobile
12 playgrounds, artificial climbing walls, and other patron-propelled amusement
13 rides or amusement attractions shall be inspected annually, unless a more
14 frequent schedule of inspections is established by rules of the ~~director~~
15 secretary or his or her designee for certain types of inflatable attractions
16 and self-contained mobile playgrounds.

17 (B) Self-contained mobile playgrounds, artificial climbing
18 walls, and other patron-propelled amusement rides or amusement attractions
19 shall be inspected pursuant to subdivision (a)(4)(A) of this section only if
20 such playgrounds contain no mechanical or electrical parts, structures, or
21 additions such as blowers or lights.

22 (C) The ~~director~~ secretary or his or her designee may
23 determine by rule which other portable amusement ride or amusement attraction
24 is sufficiently safe to justify inspection only one (1) time each six (6)
25 months.

26 (b) The ~~director~~ secretary or his or her designee is authorized to
27 make an inspection on an emergency basis when notification pursuant to this
28 subchapter is made less than four (4) days, excluding Saturdays, Sundays, and
29 legal holidays, prior to the date of the operation of the facility, if he or
30 she determines that the owner or operator could not have reasonably known of
31 the proposed operation prior to the four-day period and that the owner or
32 operator meets all other requirements for operation in this state.

33 (c) If the ~~director~~ secretary or his or her designee or an authorized
34 employee of the Division of Labor finds that any amusement ride or amusement
35 attraction is defective in a manner affecting patron safety or unsafe, he or
36 she shall attach to the amusement ride or amusement attraction a notice and

1 order prohibiting its use or operation. Operation of the amusement ride shall
2 not resume until the unsafe or hazardous condition is corrected and the
3 ~~director~~ Secretary or his or her authorized representative permits such an
4 operation.

5 (d) Any inspector certified pursuant to the requirements of this
6 subchapter who, upon inspection of an amusement ride or amusement attraction,
7 finds the amusement ride or amusement attraction to be defective or unsafe
8 shall immediately report the amusement ride or amusement attraction and its
9 condition to the division.

10 (e) The ~~director~~ secretary or his or her designee shall charge a fee
11 to be paid by the owner of any amusement ride or amusement attraction for all
12 amusement ride safety inspections performed by any employee of the division.
13 Such fees shall be as follows:

14 (1) For one (1) to five (5) amusement rides or amusement
15 attractions, one hundred dollars (\$100);

16 (2) For six (6) to fifteen (15) amusement rides or amusement
17 attractions, two hundred dollars (\$200);

18 (3) For sixteen (16) to twenty-five (25) amusement rides or
19 amusement attractions, three hundred dollars (\$300);

20 (4) For twenty-six (26) to thirty-five (35) amusement rides or
21 amusement attractions, four hundred dollars (\$400); and

22 (5) For thirty-six (36) and more amusement rides or amusement
23 attractions, six hundred dollars (\$600).

24 (f) The ~~director~~ secretary or his or her designee is authorized by
25 rule to implement an inspection fee waiver program for the benefit of a
26 county fair association, provided that:

27 (1) The county's population is under fifteen thousand (15,000)
28 based on United States Bureau of the Census estimates as of July 1, 1999; and

29 (2) The county fair association can demonstrate that it would be
30 unable to obtain a carnival for its county fair without such a waiver.

31

32 SECTION 129. Arkansas Code § 23-89-507 is amended to read as follows:

33 23-89-507. Inspection by insurance company – Change in coverage.

34 (a)(1) Except as provided in subdivision (a)(3) of this section, an
35 insurance company insuring an operator of an amusement attraction or
36 amusement ride as required in this subchapter shall inspect the amusement

1 attraction or amusement ride of the insured for safety at least one (1) time
2 each calendar year.

3 (2) The operator shall maintain a copy of a report required
4 under subdivision (a)(1) of this section at the site of operation of the
5 amusement attraction or amusement ride, together with proof of insurance
6 coverage.

7 (3) An insurance company insuring an inflatable attraction is
8 not required to perform an inspection of the inflatable attraction.

9 (b) If any insurer insuring an operator shall cancel the coverage of
10 the operator, the insurer shall notify the ~~Director of the Division of Labor~~
11 Secretary of the Department of Labor and Licensing or his or her designee of
12 the cancellation at least ten (10) days before the cancellation is effective.

13 (c) The insurer shall immediately notify the ~~director~~ secretary or his
14 or her designee if the cancellation notice is rescinded or coverage is
15 reinstated.

16 (d) If the insurer finds any amusement attraction or amusement ride to
17 be unsafe or cancels the insurance coverage and so notifies the ~~director~~
18 secretary or his or her designee, then the ~~director~~ secretary or his or her
19 designee shall immediately issue a cease and desist order preventing any
20 operation until written documentation is provided to the ~~director~~ secretary
21 or his or her designee that the amusement attraction or amusement ride has
22 been made safe or insurance coverage has been obtained.

23 (e) Any insurance company or surplus lines insurer failing to comply
24 with this section shall be subject to revocation of its certificate of
25 authority or registration by the Insurance Commissioner, or in lieu of
26 suspension or revocation, a fine assessed by the commissioner of not more
27 than fifty thousand dollars (\$50,000).

28 (f) Any employee or contractor of an insurer inspecting amusement
29 rides in Arkansas shall be registered and certified by the Division of Labor
30 pursuant to rule adopted by the ~~director~~ secretary or his or her designee.

31

32 SECTION 130. Arkansas Code § 23-89-508 is amended to read as follows:

33 23-89-508. Rules.

34 The ~~Director of the Division of Labor~~ Secretary of the Department of
35 Labor and Licensing or his or her designee is authorized to adopt appropriate
36 rules to carry out the intent and purposes of this subchapter and to assure

1 its efficient and effective enforcement.

2
3 SECTION 131. Arkansas Code § 23-89-509 is amended to read as follows:
4 23-89-509. Cease and desist orders – Notice required.

5 (a)(1) Upon issuance of cease and desist orders pursuant to § 23-89-
6 504 or § 23-89-507, the ~~Director of the Division of Labor~~ Secretary of the
7 Department of Labor and Licensing or his or her designee shall promptly
8 transmit his or her order to the Director of the Division of Arkansas State
9 Police.

10 (2) Whenever possible, the ~~Director of the Division of Labor~~
11 secretary or his or her designee shall notify any applicable fair boards or
12 sponsoring organizations in the respective districts or counties of this
13 state where the amusement attractions or amusement rides are in operation or
14 are scheduled to be in operation.

15 (3) The ~~Director of the Division of Labor~~ secretary or his or
16 her designee shall promptly notify these parties when a cease and desist
17 order has been rescinded upon proof of the operator's compliance with the
18 provisions of this subchapter.

19 (b) Upon receipt of the ~~Director of the Division of Labor's~~ secretary
20 or his or her designee's order to cease and desist operations pursuant to
21 subsection (a) of this section, the Division of Arkansas State Police shall
22 promptly serve the order on the operator and order the operator immediately
23 to cease operation of all applicable amusement attractions or amusement rides
24 in operation or scheduled to be in operation in those districts or counties
25 until the cease and desist order has been rescinded.

26
27 SECTION 132. Arkansas Code § 23-89-515(b)(2), concerning
28 nondestructive testing under the Amusement Ride and Amusement Attraction
29 Safety Insurance Act, is amended to read as follows:

30 (2) The professional engineer or other qualified individual
31 shall be approved by the ~~Director of the Division of Labor~~ Secretary of the
32 Department of Labor and Licensing or his or her designee.

33
34 SECTION 133. Arkansas Code § 23-89-516(a), concerning records under
35 the Amusement Ride and Amusement Attraction Safety Insurance Act, is amended
36 to read as follows:

1 (a) ~~The Director of the Division of Labor~~ Secretary of the Department
2 of Labor and Licensing or his or her designee shall keep records and
3 statistics by year of serious injuries and fatalities resulting from
4 amusement ride accidents. Such records and statistics shall specify the year
5 of the accident, type of injury, type of amusement ride or amusement
6 attraction involved, and cause of the accident.

7
8 SECTION 134. Arkansas Code § 23-89-516(b)(4), concerning accident
9 reports under the Amusement Ride and Amusement Attraction Safety Insurance
10 Act, is amended to read as follows:

11 (4) All accident records for a period of one (1) year on
12 premises, although such records shall be maintained and subject to being made
13 available to the ~~director~~ secretary or his or her designee for a period of
14 three (3) years;

15
16 SECTION 135. Arkansas Code § 23-89-518 is amended to read as follows:

17 23-89-518. Amusement Ride Safety Advisory Board – Creation – Duties.

18 (a)(1) There is created an Amusement Ride Safety Advisory Board.

19 (2)(A) The board shall be appointed by the Governor.

20 (B) ~~The Director of the Division of Labor~~ Secretary of the
21 Department of Labor and Licensing or his or her designee shall be ex officio
22 chair.

23 (C) The board shall consist of five (5) additional
24 members:

25 (i) One (1) member of the board shall be the
26 Secretary of the Department of Parks, Heritage, and Tourism or his or her
27 designee;

28 (ii) One (1) member of the board shall represent
29 owners or operators of amusement rides that are portable in nature;

30 (iii) One (1) member of the board shall represent
31 owners or operators of permanently placed amusement rides;

32 (iv) One (1) member of the board shall represent
33 fair managers in Arkansas; and

34 (v) One (1) member of the board shall represent the
35 general public.

36 (3)(A) Except for the ~~director and the secretary~~ Secretary of

1 the Department of Labor and Licensing and the Secretary of the Department of
2 Parks, Heritage, and Tourism, the terms of office of the members shall be for
3 four (4) years or until a successor is appointed.

4 (B) No member of the board shall be appointed to serve
5 more than two (2) consecutive full terms.

6 (C) At the time of appointment or reappointment, the
7 Governor shall adjust the length of terms to ensure that the terms of board
8 members are staggered so that, insofar as is possible, an equal number of
9 members shall rotate each year.

10 (b) The duties of the board shall be:

11 (1) To assist the ~~director~~ Secretary of the Department of Labor
12 and Licensing or his or her designee with the formulation of rules regarding
13 the safe operation of amusement rides; and

14 (2) To give the Division of Labor such counsel and advice as
15 will aid it in the proper enforcement and administration of the provisions of
16 this subchapter.

17 (c) Except for the ex officio chair and the ~~secretary~~ Secretary of the
18 Department of Parks, Heritage, and Tourism, the members of the board may
19 receive expense reimbursement and stipends in accordance with § 25-16-901 et
20 seq.

21
22 SECTION 136. Arkansas Code § 25-43-1105(d), concerning the employment
23 of a Director of the Division of Labor, is repealed.

24 ~~(d) The secretary may employ a Director of the Division of Labor.~~

25
26 SECTION 137. Title 25, Chapter 43, Subchapter 11, is amended to add an
27 additional section to read as follows:

28 25-43-1108. Secretary of the Department of Labor and Licensing –
29 Authority.

30 (a) Notwithstanding any other provision of law concerning a board,
31 commission, section, or division under the Department of Labor and Licensing,
32 the Secretary of the Department of Labor and Licensing shall have the
33 authority to:

34 (1) Hire and fire:

35 (A) The executive director of a board, commission,
36 section, or division of the Department of Labor and Licensing; and

1 (B) An agent, employee, or independent contractor of a
2 board, commission, section, or division under the Department of Labor and
3 Licensing;

4 (2) Serve or designate an individual to serve on behalf of the
5 secretary on any board, commission, section, or division for which the
6 secretary or any other agent or employee of the Department of Labor and
7 Licensing is designated to serve with the same rights, powers, and position;
8 and

9 (3) Structure, restructure, or otherwise organize the staff and
10 duties of each board, commission, section, or division of the Department of
11 Labor and Licensing, including without limitation:

12 (A) Organizing the function and operation of the staff of
13 a board, commission, section or division of the Department of Labor and
14 Licensing;

15 (B) Assigning a position and duties to an employee; and

16 (C)(i) Transferring a position, employee, or job
17 assignment on a permanent or temporary basis to enable the efficient
18 operation of each board, commission, section, and division of the Department
19 of Labor and Licensing upon the approval of the Legislative Council or, if
20 the General Assembly is in regular session, fiscal session, or extraordinary
21 session, the Joint Budget Committee.

22 (ii) The Department of Finance and Administration
23 and the Department of Shared Administrative Services shall provide any
24 assistance required to enable a position transfer under subdivision
25 (a)(3)(C)(i) of this section.

26 (iii)(a) Determining the maximum number of employees
27 and the maximum amount of appropriation of general revenue funding for a
28 state agency each fiscal year is the prerogative of the General Assembly and
29 is usually accomplished by delineating the maximums in the appropriation act
30 for a state agency and the general revenue allocations authorized for each
31 fund and fund account by amendment to the Revenue Stabilization Law.

32 (b) In light of subdivision (a)(3)(C)(i) of
33 this section, it is both necessary and appropriate that the General Assembly
34 maintain oversight by requiring prior approval of the Legislative Council or
35 Joint Budget Committee or their cochairs as provided by this subdivision
36 (a)(3)(C).

1 (c) The requirement of approval by the
2 Legislative Council or Joint Budget Committee or their cochairs is not a
3 severable part of this subdivision (a)(3)(C). If the requirement of approval
4 by the Legislative Council or Joint Budget Committee is ruled
5 unconstitutional by a court of competent jurisdiction, this subdivision
6 (a)(3)(C) is void.

7 (b) A provision of law existing on the effective date of this act
8 shall be superseded by this section to the extent the provision states or
9 implies the following:

10 (1) The authority of a board, commission, section, or division
11 under the Department of Labor and Licensing supersedes the authority of the
12 secretary to hire an executive director or any other agent, employee, or
13 independent contractor of a board, commission, section, or division of the
14 Department of Labor and Licensing;

15 (2) The role of the secretary is merely a consulting role; or

16 (3) An agent, employee, or independent contractor of the
17 Department of Labor and Licensing serves at the pleasure of a person, a
18 public official, or an entity other than the secretary.

19
20 /s/Irvin

21
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23 **APPROVED: 4/17/25**
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36

1 State of Arkansas
2 95th General Assembly
3 Regular Session, 2025
4

A Bill

SENATE BILL 598

5 By: Senator J. English
6 By: Representative Cozart
7

For An Act To Be Entitled

8
9 AN ACT TO AMEND VARIOUS LAWS RELATED TO THE DIVISION
10 OF WORKFORCE SERVICES; TO ALTER THE TEST USED FOR
11 DETERMINING THE EMPLOYMENT STATUS OF INDIVIDUALS; TO
12 AMEND THE DEFINITION OF "EMPLOYEE" UNDER THE WORKERS'
13 COMPENSATION LAW RESULTING FROM INITIATED ACT 4 OF
14 1948; TO STREAMLINE THE OPERATIONS OF THE DIVISION OF
15 WORKFORCE SERVICES; TO REFLECT THE REMOVAL OF THE
16 DEPARTMENT OF COMMERCE FROM ADMINISTRATION OF THE
17 TEMPORARY ASSISTANCE FOR NEEDY FAMILIES PROGRAM; TO
18 ALTER THE DISTRIBUTION OF PROCEEDS FROM
19 ADMINISTRATIVE ASSESSMENTS; AND FOR OTHER PURPOSES.
20

Subtitle

21
22
23 TO AMEND VARIOUS LAWS RELATED TO THE
24 DIVISION OF WORKFORCE SERVICES; AND TO
25 AMEND THE DEFINITION OF "EMPLOYEE" UNDER
26 THE WORKERS' COMPENSATION LAW RESULTING
27 FROM INITIATED ACT 4 OF 1948.
28

29 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
30

31 SECTION 1. Arkansas Code § 11-1-204 is amended to read as follows:
32 11-1-204. Determination of employment status.

33 For purposes of this title, an employer or agency charged with
34 determining the employment status of an individual shall use the ~~twenty-~~
35 ~~factor test~~ factors enumerated by the Internal Revenue Service in ~~Rev. Rul.~~
36 ~~87-41, 1987-1 C.B. 296~~ 26 C.F.R. § 31.3121(d)-1, as it existed on January 1,



1 ~~2025~~, in making its determination and shall consider whether:

2 ~~(1) A person for whom a service is performed has the right to~~
3 ~~require compliance with instructions, including without limitation when,~~
4 ~~where, and how a worker is to work;~~

5 ~~(2) A worker is required to receive training, including without~~
6 ~~limitation through:~~

7 ~~(A) Working with an experienced employee;~~

8 ~~(B) Corresponding with the person for whom a service is~~
9 ~~performed;~~

10 ~~(C) Attending meetings; or~~

11 ~~(D) Other training methods;~~

12 ~~(3) A worker's services are integrated into the business~~
13 ~~operation of the person for whom a service is performed and are provided in a~~
14 ~~way that shows the worker's services are subject to the direction and control~~
15 ~~of the person for whom a service is performed;~~

16 ~~(4) A worker's services are required to be performed personally,~~
17 ~~indicating an interest in the methods used and the results;~~

18 ~~(5) A person for whom a service is performed hires, supervises,~~
19 ~~or pays assistants;~~

20 ~~(6) A continuing relationship exists between a worker performing~~
21 ~~services and a person for whom a service is performed;~~

22 ~~(7) A worker performing a service has hours set by the person~~
23 ~~for whom a service is performed;~~

24 ~~(8) A worker is required to devote substantially full time to~~
25 ~~the business of the person for whom a service is performed, indicating the~~
26 ~~person for whom a service is performed has control over the amount of time~~
27 ~~the worker spends working and by implication restricts the worker from~~
28 ~~obtaining other gainful work;~~

29 ~~(9)(A) The work is performed on the premises of the person for~~
30 ~~whom a service is performed, or the person for whom a service is performed~~
31 ~~has control over where the work takes place.~~

32 ~~(B) A person for whom a service is performed has control~~
33 ~~over where the work takes place if the person has the right to:~~

34 ~~(i) Compel the worker to travel a designated route;~~

35 ~~(ii) Compel the worker to canvass a territory within~~
36 ~~a certain time; or~~

1 ~~(iii) Require that the work be done at a specific~~
2 ~~place, especially if the work could be performed elsewhere;~~

3 ~~(10) A worker is required to perform services in the order or~~
4 ~~sequence set by the person for whom a service is performed or the person for~~
5 ~~whom a service is performed retains the right to set the order or sequence;~~

6 ~~(11) A worker is required to submit regular oral or written~~
7 ~~reports to the person for whom a service is performed;~~

8 ~~(12) A worker is paid by the hour, week, or month except when he~~
9 ~~or she is paid by the hour, week, or month only as a convenient way of paying~~
10 ~~a lump sum agreed upon as the cost of a job;~~

11 ~~(13) A person for whom a service is performed pays the worker's~~
12 ~~business or traveling expenses;~~

13 ~~(14) A person for whom a service is performed provides~~
14 ~~significant tools and materials to the worker performing services;~~

15 ~~(15) A worker invests in the facilities used in performing the~~
16 ~~services;~~

17 ~~(16) A worker realizes a profit or suffers a loss as a result of~~
18 ~~the services performed that is in addition to the profit or loss ordinarily~~
19 ~~realized by an employee;~~

20 ~~(17) A worker performs more than de minimis services for more~~
21 ~~than one (1) person or firm at the same time, unless the persons or firms are~~
22 ~~part of the same service arrangement;~~

23 ~~(18) A worker makes his or her services available to the general~~
24 ~~public on a regular and consistent basis;~~

25 ~~(19) A person for whom a service is performed retains the right~~
26 ~~to discharge the worker; and~~

27 ~~(20) A worker has the right to terminate the relationship with~~
28 ~~the person for whom a service is performed at any time he or she wishes~~
29 ~~without incurring liability.~~

30
31 SECTION 2. Arkansas Code § 11-4-103 is amended to read as follows:

32 11-4-103. Employment status.

33 For purposes of this chapter, employment status as an employee or
34 independent contractor is determined by consideration of the ~~twenty-factor~~
35 ~~test~~ factors required by the Empower Independent Contractors Act of 2019, §
36 11-1-201 et seq.

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SECTION 3. Arkansas Code § 11-4-607(1)(A), concerning the definition of "employee" under the wage discrimination law, is amended to read as follows:

(1)(A) "Employee" means an individual who performs services for an employer for wages in a lawful business, industry, trade, profession, or enterprise, and the individual's employment status has been determined by consideration of the ~~twenty-factor test~~ factors required by the Empower Independent Contractors Act of 2019, § 11-1-201 et seq.

SECTION 4. Arkansas Code § 11-9-102(9)(A), concerning the definition of "employee" under the Workers' Compensation Law resulting from Initiated Act 4 of 1948, is amended to read as follows:

(9)(A) "Employee" means an individual, including a minor, whether lawfully or unlawfully employed in the service of an employer under a contract of hire or apprenticeship, written or oral, expressed or implied, and the individual's employment status has been determined by consideration of the ~~twenty-factor test~~ factors required by the Empower Independent Contractors Act of 2019, § 11-1-201 et seq.

SECTION 5. Arkansas Code § 11-9-103(d), concerning the applicability of the chapter in the determination of employment status under the Workers' Compensation Law resulting from Initiated Act 4 of 1948, is amended to read as follows:

(d) For purposes of this chapter, employment status as an employee or independent contractor is determined by consideration of the ~~twenty-factor test~~ factors required by the Empower Independent Contractors Act of 2019, § 11-1-201 et seq.

SECTION 6. Arkansas Code § 11-10-210(e), concerning the definition of "employment" related services performed by an individual for an employer for wages, under the Division of Workforce Services Law, is amended to read as follows:

(e) Service performed by an individual for an employer for wages in a lawful business, industry, trade, profession, or enterprise, and the individual's employment status has been determined by consideration of the

1 ~~twenty-factor test~~ factors required by the Empower Independent Contractors
2 Act of 2019, § 11-1-201 et seq., is deemed to be employment under this
3 chapter.

4
5 SECTION 7. Arkansas Code § 11-10-301(a), concerning the creation of
6 the Division of Workforce Services, is amended to read as follows:

7 (a)(1) There is created a division to be known as the “Division of
8 Workforce Services”.

9 (2) The division shall be administered by a full-time salaried
10 director.

11 ~~(3) The Director of the Division of Workforce Services shall be~~
12 ~~appointed by and serve at the pleasure of the Governor.~~

13 ~~(4) The director~~ Director of the Division of Workforce Services
14 shall report to the Secretary of the Department of Commerce.

15 ~~(5) The director shall have resided in the state for at least~~
16 ~~five (5) years and shall be a qualified elector.~~

17
18 SECTION 8. Arkansas Code § 11-10-507(a)(3)(E), concerning the amount
19 of time considered as a short-term layoff related to being able and available
20 to work under the Division of Workforce Services Law related to eligibility
21 for unemployment compensation benefits, is amended to read as follows:

22 (E) An individual on short-term layoff who expects to be
23 recalled by his or her employer to a full-time job and whose employer intends
24 to recall the individual to a full-time job within ~~ten (10)~~ three (3) weeks
25 after the initial date of his or her layoff shall not be required during the
26 layoff to register for work at a division office or to seek other work.

27
28 SECTION 9. Arkansas Code § 11-10-507(b), concerning the work search
29 contacts required under the Division of Workforce Services Law, is amended to
30 add an additional subdivision to read as follows:

31 (4) The director may establish by rule the criteria for the
32 reduction or removal of the work search requirement under this section.

33
34 SECTION 10. Arkansas Code § 11-10-519(a)(1)(A), concerning the
35 disqualification of benefits for false statements, is amended to read as
36 follows:

1 (1)(A) If he or she willfully makes a false statement or
2 misrepresentation of a material fact or willfully fails to disclose a
3 material fact in filing an initial claim or a claim renewal, he or she shall
4 be disqualified from the effective date of the disqualification until he or
5 she has twenty (20) weeks of employment as defined under § 11-10-210 in each
6 of ~~which~~ the weeks he or she has earned wages equal to at least his or her
7 weekly benefit amount.

8
9 SECTION 11. Arkansas Code § 11-10-521(b)(1)(A), concerning a notice of
10 the filing of an initial claim under the Division of Workforce Services Law
11 to the last employer, is amended to read as follows:

12 (b)(1)(A) A notice of the filing of an initial claim shall be
13 immediately mailed or posted online under subsection (c) of this section, or
14 both, to the employing unit known to the claimant as his or her last employer
15 as defined under § 11-10-209.

16
17 SECTION 12. Arkansas Code § 11-10-532, concerning recovery of amounts
18 paid under the Division of Workforce Services Law, is amended to add an
19 additional subsection to read as follows:

20 (h) The director may promulgate rules to establish criteria for the
21 eligibility of claimants for a waiver of penalties and interest for the
22 settlement of overpayments under this section.

23
24 SECTION 13. Arkansas Code § 11-10-720(a)(2)(A), concerning the
25 certification of assessment after ten (10) days related to delinquent
26 contributions, interest, or penalties under the Division of Workforce
27 Services Law, is amended to read as follows:

28 (2)(A) At the end of ten (10) days thereafter, the assessment
29 shall become prima facie correct, and the director shall certify the amount
30 of the delinquent contributions, interest, and penalties to the clerk of the
31 circuit court of the county wherein the employer is domiciled or has a place
32 of business, and it shall be the duty of the clerk to file the certificate of
33 record and to enter it in the record of the circuit court for judgment and
34 decree under the procedure prescribed for filing ~~transcripts of judgments by~~
35 ~~§ 16-19-1011 [repealed]~~.

36

1 SECTION 14. Arkansas Code § 15-4-3705 is amended to read as follows:
2 15-4-3705. Arkansas Workforce Development Board committees.

3 (a)(1) To comply with the requirements and responsibilities assigned
4 under this subchapter, the Arkansas Workforce Development Board shall select
5 from its membership an executive committee to be composed of at least nine
6 (9) members but no more than eleven (11) members.

7 (2) The Chair of the Arkansas Workforce Development Board and
8 the Vice Chair of the Arkansas Workforce Development Board shall serve as
9 chair and vice chair of the executive committee, respectively.

10 (3) The membership of the executive committee shall include:

11 (A) At least five (5) members representing businesses;

12 (B) At least one (1) chief elected official; and

13 (C) At least two (2) representatives from among members
14 appointed under § 15-4-3704(b)(2)(B).

15 ~~(b)(1) The board shall have a standing committee to provide oversight~~
16 ~~of the Temporary Assistance for Needy Families Program and ensure that all~~
17 ~~program participants are receiving the assistance, the information, and the~~
18 ~~services needed to help these low-income parents prepare for and connect with~~
19 ~~employment that will lead to a self-sufficient wage.~~

20 ~~(2) The membership of the standing committee shall include:~~

21 ~~(A) At least five (5) members representing businesses;~~

22 ~~(B) At least one (1) chief elected official;~~

23 ~~(C) At least one (1) member from among those members~~
24 ~~appointed under § 15-4-3704(b)(2)(B);~~

25 ~~(D) The Director of the Division of Workforce Services;~~
26 ~~and~~

27 ~~(E) The Director of the Division of County Operations, as~~
28 ~~a standing committee voting member who is also not a member of the board.~~

29 ~~(e)(b)~~ The board may form other committees as needed.

30 ~~(d)(c)~~ Membership on any committee shall not extend beyond the
31 member's term of service on the board.

32
33 SECTION 15. Arkansas Code § 19-5-984(b)(2), concerning the use of the
34 Division of Workforce Services Special Fund, is amended to read as follows:

35 (2) The fund shall be used for refunds of interest and penalties
36 erroneously paid and other additional purposes as determined by the Director

1 of the Division of Workforce Services under §§ 11-10-532 and 11-10-716 – 11-
2 10-723 to be necessary to the proper administration of the following:

3 (A) The Division of Workforce Services Law, § 11-10-101 et
4 seq.;

5 (B) The Arkansas Workforce Innovation and Opportunity Act,
6 § 15-4-3701 et seq., or its successor;

7 ~~(C) The Temporary Assistance for Needy Families Program, §~~
8 ~~20-76-101 et seq., or its successor;~~

9 ~~(D) The Arkansas Health and Opportunity for Me Act of~~
10 ~~2021, § 23-61-1001 et seq., or its successor;~~ and

11 ~~(E)~~(C) Any other programs transferred under the direction
12 and supervision of the Division of Workforce Services, by either executive
13 order or legislative enactment, or their successor programs.

14
15 SECTION 16. Arkansas Code § 19-5-1131(b), concerning the use of the
16 Division of Workforce Services Training Trust Fund, is amended to read as
17 follows:

18 (b)(1) The fund shall consist of the proceeds of the administrative
19 assessment specified in § 11-10-706(c)(3), any interest accruing on these
20 revenues, and any other funds made available by the General Assembly.

21 (2) The fund shall be used for personnel services, operating
22 expenses, and grants for the administration of worker training programs under
23 rules promulgated by the Director of the Division of Workforce Services.

24
25 SECTION 17. Arkansas Code § 20-76-106(a)(2), concerning the statewide
26 implementation plan related to transitional employment assistance, is amended
27 to read as follows:

28 (2)~~(A)~~ Ensure that program recipients throughout the state,
29 including those in rural areas, have comparable access to transitional
30 employment assistance benefits.

31 ~~(B) The statewide implementation plan shall be subject to~~
32 ~~the review and recommendation of the Arkansas Workforce Development Board.~~

33
34 SECTION 18. Arkansas Code § 20-76-704(a)(2), concerning the powers and
35 duties of the Department of Human Services under the Drug Screening and
36 Testing Act of 2015, is amended to read as follows:

1 (2) Develop appropriate screening techniques and processes to
2 establish reasonable cause that an applicant or recipient is using a drug and
3 to establish the necessary criteria ~~to permit the Division of Workforce~~
4 ~~Services, in coordination with the department,~~ to require the applicant or
5 recipient to undergo no less than a five-panel drug test;
6

7 SECTION 19. Arkansas Code § 21-6-402(c), concerning fees to be charged
8 by the circuit court clerks, is amended to read as follows:

9 (c) The fees to be charged by the circuit court clerks of this state
10 to the Department of Finance and Administration and the Division of Workforce
11 Services shall be as follows:

12 (1) For filing a certificate of indebtedness issued by the
13 Department of Finance and Administration or a certificate of overpayment or
14 certificate of assessment by the Division of Workforce Services 8.00

15 (2) For filing a release of a certificate of indebtedness, a
16 certificate of overpayment, or a certificate of assessment 6.00

17 (3) For an execution on a certificate of indebtedness filed by
18 the Department of Finance and Administration or a certificate of overpayment
19 or a certificate of assessment filed by the Division of Workforce Services
20 10.00.

21
22 SECTION 20. Arkansas Code § 23-115-1004(c), concerning the priority of
23 liens by a claimant agency on winnings under the Arkansas Scholarship Lottery
24 Act, is amended to read as follows:

25 (c) The liens created by this section are ranked by priority as
26 follows:

- 27 (1) Taxes due the state;
- 28 (2) Delinquent child support; ~~and~~
- 29 (3) Overpayment of unemployment insurance benefits; and
- 30 ~~(3)(4)~~ All other judgments and liens in order of the date

31 entered or perfected.
32

33 SECTION 21. Arkansas Code § 25-30-109(a)(1), concerning the creation
34 of the Office of Skills Development, is amended to read as follows:

35 (a)(1) There is created ~~within the Department of Commerce~~ the Office
36 of Skills Development within the Division of Workforce Services.

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APPROVED: 4/17/25