

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

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

As Engrossed: H2/23/05

A Bill

HOUSE BILL 1795

5 By: Representative Ledbetter
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For An Act To Be Entitled

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

Subtitle

14 AN ACT TO PROHIBIT A STATE EMPLOYEE FROM
15 RETAINING WITNESS OR MILEAGE FEES WHEN
16 SUBPOENAED AS A WITNESS FOR A MATTER
17 WITHIN THE SCOPE OF THE EMPLOYEE'S
18 EMPLOYMENT.
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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24 SECTION 1. Arkansas Code § 5-2-317 is amended to read as follows:
25 5-2-317. Jurisdiction and venue.

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

30 (b) Venue shall be determined as follows:

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

36 (2) For persons who have been conditionally released pursuant to



1 § 5-2-315, venue for any hearing seeking the modification, revocation, or
2 dismissal of a conditional release order shall be in the county where the
3 person currently resides.

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

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

13 (1)(1) Upon receipt of an order from a court of record of this state
14 by the director for information pertaining to an individual's current wage
15 file and unemployment benefit payment record as contained in the records of
16 the Arkansas Employment Security Department, the information shall be made
17 available to the court for the purpose of determining an amount of support to
18 be set during a proceeding for the establishment or collection of child
19 support obligations or both.

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

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

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

36 ~~(5)(A) If an appearance is required, the Arkansas Employment~~

1 ~~Security Department shall be awarded a witness fee to cover the actual costs~~
2 ~~of the appearance of the witness.~~

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

5 ~~(6)~~(4) The director shall comply with the court order for
6 information if the following conditions are met:

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

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

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

15 ~~(7)~~(5) Provided, however, the Arkansas Employment Security
16 Department may not release information under this subsection (1) if the
17 United States Secretary of Labor rules that release of the information would
18 be grounds to find that the state is in substantial noncompliance with 42
19 U.S.C. § 503 or 26 U.S.C. § 3304.

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21 SECTION 3. Arkansas Code § 21-4-213 is amended to read as follows:

22 21-4-213. Court and jury leave.

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

29 (b) A state employee subpoenaed as a witness to give a deposition or
30 testimony in a state or federal court, a hearing, or before any body with
31 power to issue a subpoena shall:

32 (1) Be entitled to his or her salary for the time attributable
33 to service as a witness only if the matter before the court or body with
34 subpoena power is within the employee's scope of state employment. The time
35 away from the employee's state employment shall not be counted as annual
36 leave;

1 (2) Not retain any witness fees that may be tendered to him or
2 her under state or federal law or court rules unless the matter before the
3 court or body with subpoena power is outside of the scope of the employee's
4 state employment; and

5 (3) Not retain any fees for mileage that may be tendered to him
6 or her under state or federal law or court rules unless the employee uses a
7 personal vehicle for travel in obeying the subpoena and the employee's
8 employer does not reimburse the employee for travel expenses.

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

11 (A) This section shall not apply; and

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

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

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

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

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

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27 /s/ Ledbetter
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