

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 87th General Assembly  
3 Regular Session, 2009  
4

As Engrossed: S3/17/09

# A Bill

SENATE BILL 429

5 By: Senator Steele  
6 By: Representative Allen  
7  
8

## For An Act To Be Entitled

9 AN ACT TO AMEND VARIOUS PROVISIONS OF THE  
10 DEPARTMENT OF WORKFORCE SERVICES LAW; AND FOR  
11 OTHER PURPOSES.  
12

### Subtitle

13 TO AMEND VARIOUS PROVISIONS OF THE  
14 DEPARTMENT OF WORKFORCE SERVICES LAW.  
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18  
19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
20

21 *SECTION 1. Arkansas Code 11-10-201, concerning a claimant's base*  
22 *period, is amended by adding an additional subsection to read as follows:*

23 *(c)(1) Beginning with initial claims filed on July 1, 2009, and*  
24 *thereafter, if an individual lacks sufficient base period wages, an alternate*  
25 *base period shall be substituted for the current base period.*

26 *(2) "Alternate base period" means the four (4) completed calendar*  
27 *quarters immediately preceding the first day of that benefit year.*  
28

29 *SECTION 2. Arkansas Code § 11-10-215(a)(1)(A), concerning*  
30 *remunerations that are not included in the definition of wages, is amended to*  
31 *read as follows:*

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

33 *(i) That part of remuneration paid to an individual*  
34 *by an employer with respect to employment during any calendar year beginning*  
35 *after December 31, ~~1994~~ 2003, and ending December 31, ~~2002~~ 2009, which*  
36 *exceeds ~~nine thousand dollars \$9,000~~ ten thousand dollars (\$10,000); and*



1                                   (ii) For ~~the~~ any calendar year beginning after  
 2 December 31, 2002 2009, that part of remuneration which exceeds ~~nine thousand~~  
 3 ~~five hundred dollars (\$9,500)~~ twelve thousand dollars (\$12,000); and  
 4                                   ~~(iii) For any calendar year beginning after December~~  
 5 ~~31, 2003, that part of remuneration which exceeds ten thousand dollars~~  
 6 ~~(\$10,000).~~

7  
 8           SECTION 3. Arkansas Code § 11-10-507(3)(A), concerning ability and  
 9 availability for work, is amended to read as follows:

10                                   (A) The worker is unemployed, is physically and mentally  
 11 able to perform suitable work, and is available for such work. Mere  
 12 registration and reporting at a local employment office shall not be  
 13 conclusive evidence of ability to work, availability for work, or willingness  
 14 to accept work unless the individual is doing those things which a reasonably  
 15 prudent individual would be expected to do to secure work. In determining  
 16 suitable work under this section and for refusing to apply for or accept  
 17 suitable work under § 11-10-515, part-time work shall be considered suitable  
 18 work unless the majority of weeks of work in the period used to determine  
 19 monetary eligibility is from full-time work.

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 21           SECTION 4. Arkansas Code § 11-10-513(b), concerning disqualification  
 22 for voluntarily leaving work, is amended to read as follows:

23                                   (b) No individual shall be disqualified under this section if after  
 24 making reasonable efforts to preserve his or her job rights he or she left  
 25 his or her last work:

26                                   (1) Due to a personal emergency of such nature and compelling  
 27 urgency that it would be contrary to good conscience to impose a  
 28 disqualification;

29                                   (2)(A) Because of illness, injury, pregnancy, or disability; ~~or~~  
 30 of the individual or a member of the individual's immediate family.

31                                   (B) As used in subdivision (b)(2)(A) of this section,  
 32 "immediate family member" means a spouse, child, parent, brother, sister,  
 33 grandchild, or grandparent of the individual;

34                                   (3)(A) ~~To move with a military spouse to a new duty station~~ Due  
 35 to domestic violence that causes the individual reasonably to believe that  
 36 the individual's continued employment will jeopardize the safety of the

1 individual or a member of the individual's immediate family.

2 (B) As used in subdivision (b)(3)(A) of this section,  
 3 "immediate family member" means a spouse, child, parent, brother, sister,  
 4 grandchild, or grandparent of the individual; or

5 (4) To accompany the individual's spouse because of a change in  
 6 the location of the spouse's employment that makes it impractical to commute.

7  
 8 SECTION 5. Arkansas Code § 11-10-514(a)(3), concerning the  
 9 continuation of a disqualification for misconduct, is amended to read as  
 10 follows:

11 (3)(A) Except as otherwise provided in this section, an individual's  
 12 disqualification for misconduct shall be for eight (8) weeks of unemployment  
 13 as defined in § 11-10-512.

14 (B) However, for a discharge that occurs during the period of  
 15 July 1, 2009, through June 30, 2011, the disqualification under subdivision  
 16 (a)(3)(A) of this section shall continue until, subsequent to filing a claim,  
 17 he or she has had at least thirty (30) days of employment covered by an  
 18 unemployment compensation law of this state, another state, or the United  
 19 States.

20  
 21 SECTION 6. Arkansas Code § 11-10-524(b)(1), concerning the appeal of a  
 22 claims determination made by the Department of Workforce Services, is amended  
 23 to read as follows:

24 (b)(1) Unless the appeal is withdrawn with its permission or is  
 25 removed to the board, the appeal tribunal, after affording the parties a  
 26 reasonable opportunity for a fair hearing, and on the basis of the record,  
 27 shall affirm, modify, reverse, dismiss, or remand the determination.

28  
 29 SECTION 7. Arkansas Code § 11-10-525(c)(1), concerning the appeal of a  
 30 claims determination of the appeal tribunal, is amended to read as follows:

31 (c)(1) Upon review on its own motion or upon appeal and on the basis  
 32 of evidence previously submitted in the case, or upon the basis of any  
 33 additional evidence as it may direct be taken, the board may affirm, modify,  
 34 ~~or reverse, the findings and conclusions of the appeal tribunal or may~~  
 35 dismiss, or remand the case.

36

1 SECTION 8. Arkansas Code § 11-10-526(a)(2), concerning the  
2 promulgation of rules governing appeals under the Department of Workforce  
3 Services Law, is amended to read as follows:

4 (2) In like manner as provided at § 11-10-307(a) for the adopting,  
5 amending, or rescinding of general rules by the Director of the Department of  
6 Workforce Services, the board ~~shall~~ may adopt reasonable regulations  
7 governing the manner of filing appeals, the conduct of hearings, and other  
8 appellate procedures, consistent with this chapter.

9  
10 SECTION 9. Arkansas Code § 11-10-532(a)(2), concerning the method for  
11 recovering an overpayment resulting from a false statement,  
12 misrepresentation, or omission that was knowingly made by a claimant, is  
13 amended to read as follows:

14 (2) ~~However, beginning on July 1, 2001, the person shall not be liable~~  
15 ~~to repay such amount to the fund, except through the deduction of future~~  
16 ~~benefits, after ten (10) years from the date the determination of the amount~~  
17 ~~of the overpayment becomes final within the meaning of § 11-10-527. Once the~~  
18 ~~overpayment becomes final pursuant to § 11-10-527, the amount owed shall~~  
19 ~~accrue interest at the rate of one and one half percent (1.5%) per month~~ ten  
20 percent (10%) per annum beginning thirty (30) days after the date of the  
21 first billing statement.

22  
23 SECTION 10. Arkansas Code § 11-10-532(b), concerning the limitation of  
24 liability for repayment of a benefit that a claimant was not entitled to  
25 receive, is amended to read as follows:

26 (b)(1)~~(A)~~ If the director finds that ~~any~~ a person has received ~~any~~ an  
27 amount as benefits under this chapter to which he or she was not entitled by  
28 reasons other than fraud, willful misrepresentation, or willful nondisclosure  
29 of facts, the person shall be liable to repay the amount to the fund.

30 ~~(B)(2)~~ (2) In lieu of requiring the repayment, the director, ~~on~~  
31 ~~and after July 1, 1999,~~ may recover the amount by deduction of any future  
32 benefits payable to the person under this chapter unless the director finds  
33 that the overpayment was received without fault on the part of the recipient  
34 and that its recovery would be against equity and good conscience.

35 ~~(2) Any person held liable to repay an amount to the fund or to~~  
36 ~~have the amount deducted from any future benefits payable to him or her shall~~

1 ~~not be liable to repay the amount nor shall recovery be made from any future~~  
2 ~~benefits after four (4) years from the date the determination of the amount~~  
3 ~~of the overpayment becomes final within the meaning of the provisions of §~~  
4 ~~11-10-527.~~

5  
6 SECTION 11. Arkansas Code § 11-10-532, concerning the recovery of a  
7 benefit obtained through misrepresentation, omission, or fraud, is amended to  
8 add an additional subsection as follows:

9 (e) The federal income tax refund of a person held liable to repay an  
10 amount to the fund as the result of a finding of fraud shall be subject to  
11 interception pursuant to Public Law No. 110-328 and any rule or regulation  
12 adopted to implement that law.

13  
14 SECTION 12. Arkansas Code § 11-10-901 (a) and (b), concerning the  
15 director's duties and the hiring and duties of the administrator, are amended  
16 to read as follows:

17 11-10-901. Creation – Administrator – Authority.

18 (a)(1) The Director of ~~There is established within~~ the Department of  
19 ~~Workforce Services a division to be called the Division~~ is assigned  
20 responsibility for the administration of the State New Hire Registry, ~~which~~  
21 ~~shall be administered by a full time salaried administrator who shall be~~  
22 ~~appointed by and serve at the pleasure of the Director of the Department of~~  
23 ~~Workforce Services.~~

24 (2) The director shall hire an administrator of the State New  
25 Hire Registry who shall serve at the pleasure of the director.

26 (b)(1) The ~~division~~ administrator shall compile a state registry of  
27 newly hired and returning employees as required by the Personal  
28 Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No.  
29 104-193.

30 (2) The director may enter into such professional services  
31 contracts as may be necessary to assist in the development and operation of  
32 the state new hire registry.

33  
34 SECTION 13. Arkansas Code § 11-10-902 is amended to read as follows:

35 11-10-902. Reporting requirements – Enforcement of child support  
36 obligations – Confidentiality.

1 (a) As used in this section:

2 (1) “Administrator” means the administrator of the State New  
3 Hire Registry;

4 ~~(1)~~(2) “Employee” means an individual who is an employee as  
5 defined in Chapter 24 of the Internal Revenue Code of 1986 but does not  
6 include an employee of a federal or state agency performing intelligence or  
7 counterintelligence operations if the head of the agency has determined that  
8 reporting pursuant to subsection (b) of this section could endanger the  
9 safety of the employee or could compromise an ongoing operation or  
10 investigation;

11 ~~(2)~~(3) “Employer” means an employer as that term is defined in §  
12 3401(d) of the Internal Revenue Code of 1986 and includes any labor  
13 organization and any governmental entity; and

14 ~~(3)~~(4) “Labor organization” means a labor organization as that  
15 term is defined in § 2(5) of the National Labor Relations Act and includes  
16 any entity, sometimes known as a “hiring hall”, that is used by the labor  
17 organization and an employer to carry out the requirements listed in §  
18 8(f)(3) of the federal act of an agreement between the organization and the  
19 employer.

20 (b)(1) ~~On and after October 1, 1997, the Division of the State New~~  
21 ~~Hire Registry~~ The administrator shall compile an automated state registry of  
22 newly hired and returning employees.

23 (2) An employer shall report electronically or in any manner  
24 authorized by the ~~Arkansas Employment Security Department~~ Department of  
25 Workforce Services for inclusion in the ~~state registry~~ State New Hire  
26 Registry whenever an employee is newly hired or returns to work.

27 (3) An employer shall include in each report the name, address,  
28 and social security number of the employee and the name, address, and federal  
29 taxpayer identification number of the employer.

30 (4) An employer shall make the report by submitting a copy of  
31 Internal Revenue Service Form W-4 for the employee or, ~~at the option of the~~  
32 ~~employer,~~ an equivalent form. An employer may transmit the report by first  
33 class mail, magnetically, or electronically. If an employer makes the report  
34 by mail, the reporting date is that of the postmark. The report shall be  
35 received not later than twenty (20) days after the date the employer hires  
36 the employee or, in the case of an employer transmitting reports magnetically

1 or electronically, by two (2) monthly transmissions, if necessary, not less  
2 than twelve (12) days nor more than sixteen (16) days apart.

3 (5) An employer that has employees employed in two (2) or more  
4 states and transmits reports magnetically or electronically may comply with  
5 the reporting requirements of this section by designating one (1) state in  
6 which the employer has employees and to which the employer will transmit the  
7 report required by this section. Any employer that transmits reports shall  
8 notify the Secretary of the Department of Health and Human Services in  
9 writing as to which state the employer designates for the purpose of sending  
10 reports.

11 (c)(1) Information reported pursuant to this section shall be entered  
12 into the ~~registry~~ State New Hire Registry data base maintained by the  
13 ~~Arkansas Employment Security Department~~ Department of Workforce Services or  
14 its designated contractor within five (5) business days of receipt from an  
15 employer. As used herein, "business day" means a day on which state offices  
16 are open for regular business.

17 (2) Within two (2) business days after the ~~data~~ date information  
18 regarding a newly hired employee is entered into the ~~registry~~ State New Hire  
19 Registry, the Office of Child Support Enforcement of the Revenue Division of  
20 the Department of Finance and Administration shall transmit a notice to the  
21 employer directing the employer to withhold from the income of the employee  
22 an amount equal to the monthly or other periodic child support obligation,  
23 including any past due child support obligation, of the employee.

24 (3) Within three (3) business days after the date information  
25 regarding a newly hired employee is entered into the ~~registry~~ State New Hire  
26 Registry, the ~~Arkansas Employment Security Department~~ Department of Workforce  
27 Services or its designated contractor shall furnish the information to the  
28 ~~National Registry~~ Directory of New Hires.

29 (4) On a quarterly basis, the ~~state registry~~ State New Hire  
30 Registry shall furnish to the ~~national registry~~ National Directory of New  
31 Hires extracts of reporting required to be made to the Secretary of Labor  
32 concerning the wages and unemployment compensation paid to individuals by  
33 such dates, in such format, and containing such information as the Secretary  
34 of the Department of Health and Human Services shall specify in regulations.

35 (5)(A) The Department of Human Services shall have access to  
36 information reported by employers pursuant to this section for the purpose of

1 verifying eligibility for programs pursuant to 42 U.S.C. § 1320B-7.

2 (B) ~~The Arkansas Employment Security Department~~ Department  
3 of Workforce Services shall have access to information reported by employers  
4 pursuant to this section for purposes of administering the ~~Arkansas~~  
5 ~~Employment Security Department's~~ Department of Workforce Services's programs.

6 (C) The Workers' Compensation Commission shall have access  
7 to information reported by employers pursuant to this section for purposes of  
8 administering the workers' compensation programs.

9 (d)(1) ~~Not later than May 1, 1998, the Arkansas Employment Security~~  
10 ~~Department~~ The Department of Workforce Services shall directly or by contract  
11 conduct automated comparisons of the social security numbers reported by  
12 employers and the social security numbers appearing within records of the  
13 Office of Child Support Enforcement of the Revenue Division of the Department  
14 of Finance and Administration for cases being enforced under the Title IV - D  
15 State Plan.

16 (2) When an information comparison reveals a match with respect  
17 to the social security number of an individual required to provide child  
18 support under a support order, the ~~registry~~ State New Hire Registry shall  
19 immediately provide the Office of Child Support Enforcement of the Revenue  
20 Division of the Department of Finance and Administration with the name,  
21 address, and social security number of the employee to whom the social  
22 security number is assigned and the name, address, and federal employer  
23 identification number of the employer.

24 (e) The Office of Child Support Enforcement of the Revenue Division of  
25 the Department of Finance and Administration shall use information received  
26 pursuant to subsection (d) of this section to locate individuals for purposes  
27 of establishing paternity and establishing, modifying, and enforcing child  
28 support obligations and may disclose that information to its agents under  
29 contract for purposes connected to the administration of the Title IV-D Child  
30 Support Program.

31 (f) All information gathered and maintained by the ~~registry~~ State New  
32 Hire Registry:

33 (1) Shall ~~shall~~ be held confidential and be utilized solely for  
34 the purposes authorized in this section; and

35 (2) ~~The information shall be considered~~ Is an exception to the  
36 open public record requirements of the Freedom of Information Act of 1967, §

1 25-19-101 et seq.

2 (g) To the maximum extent allowable, all expenses associated with the  
3 development and operation of the ~~registry~~ State New Hire Registry shall be  
4 reimbursed through available funding under the Title IV-D Child Support  
5 Program.

6  
7 SECTION 14. EMERGENCY CLAUSE. It is found and determined by the  
8 General Assembly of the State of Arkansas that this act should go into effect  
9 as soon as possible in order to assure the prompt determination of claims for  
10 unemployment benefits and the continued provision of benefits and services to  
11 eligible persons. Therefore, an emergency is declared to exist and this act  
12 being immediately necessary for the preservation of the public peace, health,  
13 and safety shall become effective on:

14 (1) The date of its approval by the Governor;

15 (2) If the bill is neither approved nor vetoed by the Governor,  
16 the expiration of the period of time during which the Governor may veto the  
17 bill; or

18 (3) If the bill is vetoed by the Governor and the veto is  
19 overridden, the date the last house overrides the veto.

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*/s/ Steele*