

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

A Bill

SENATE BILL 439

5 By: Senator Irvin
6 By: Representative L. Johnson
7

For An Act To Be Entitled

9 AN ACT TO AMEND THE DUTIES OF THE SECRETARY OF THE
10 DEPARTMENT OF LABOR AND LICENSING; AND FOR OTHER
11 PURPOSES.
12
13

Subtitle

15 TO AMEND THE DUTIES OF THE SECRETARY OF
16 THE DEPARTMENT OF LABOR AND LICENSING.
17

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

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

23 (1) Post adequate notice, as provided by the ~~Director of the~~
24 ~~Division of Labor~~ Department of Labor and Licensing, at locations where
25 notices are normally posted, informing public employees about their rights
26 under this subchapter;
27

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

31 (e) A public employer, chemical manufacturer, or distributor shall
32 provide a copy of a material safety data sheet to the ~~Director of the~~
33 ~~Division of Labor~~ Department of Labor and Licensing upon request.
34

35 SECTION 3. Arkansas Code § 8-7-1007(b), concerning workplace chemical
36 lists under the Public Employees' Chemical Right to Know Act, is amended to



1 read as follows:

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

5
6 SECTION 4. Arkansas Code § 8-7-1008(b)(1), concerning employee
7 information and training under the Public Employees' Chemical Right to Know
8 Act, is amended to read as follows:

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

13
14 SECTION 5. Arkansas Code § 8-7-1008(e) and (f), concerning employee
15 information and training under the Public Employees' Chemical Right to Know
16 Act, are amended to read as follows:

17 (e) The information and training program required under this section
18 may be conducted with the assistance of the ~~director~~ department pursuant to §
19 8-7-1009.

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

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

26 (2) To require public employers to provide refresher training
27 for public employees in workplaces or in circumstances in which the ~~director~~
28 department reasonably determines such refresher training to be necessary and
29 appropriate.

30
31 SECTION 6. Arkansas Code § 8-7-1009 is amended to read as follows:
32 8-7-1009. Outreach activities ~~of the director~~.

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

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

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

12
13 SECTION 7. Arkansas Code § 8-7-1010(b), concerning rights of public
14 employees under the Public Employees' Chemical Right to Know Act, is amended
15 to read as follows:

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

27
28 SECTION 8. Arkansas Code § 8-7-1011 is amended to read as follows:
29 8-7-1011. Rulemaking.

30 (a) The ~~Director of the Division of Labor~~ Secretary of the Department
31 of Labor and Licensing or his or her designee may promulgate rules in
32 accordance with the provisions of §§ 11-2-110, 11-2-112, and 11-2-113 to
33 implement the provisions of this subchapter. This authority shall include,
34 but not be limited to, the authority to implement changes corresponding to
35 future amendments to the Hazard Communication Standard to maintain
36 consistency between this subchapter and the Hazard Communication Standard.

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

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

9 (4) The specific chemical identity is made available to health
10 professionals, employees, and their designated representatives under the same
11 conditions as are set out in the Hazard Communication Standard, 29 C.F.R. §
12 1910.1200(i)(2)-(7), provided, the information disclosable to the United
13 States Occupational Safety and Health Administration under the Hazard
14 Communication Standard shall also be disclosable to the ~~Director of the~~
15 ~~Division of Labor~~ Secretary of the Department of Labor and Licensing or his
16 or her designee.
17

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

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

30 SECTION 11. Arkansas Code § 8-7-1013 is amended to read as follows:
31 8-7-1013. Complaints and investigations.

32 (a) Complaints received orally or in writing from public employees,
33 their designated representatives, or public employers related to alleged
34 violations of this subchapter shall be investigated in a timely manner by the
35 ~~Director of the Division of Labor~~ Secretary of the Department of Labor and
36 Licensing or his or her designee.

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

5 (c) The ~~director~~ secretary or his or her designee shall have the same
6 powers, duties, and authority to administer and enforce the provisions of
7 this subchapter as are contained in §§ 11-2-108, 11-2-115, 11-2-116, and 11-
8 2-118. Provided, however, that if there is a conflict between the provisions
9 of this subchapter and the provisions of §§ 11-2-108, 11-2-115, 11-2-116, and
10 11-2-118, the provisions of this subchapter shall prevail.

11
12 SECTION 12. Arkansas Code § 8-7-1014 is amended to read as follows:
13 8-7-1014. Enforcement.

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

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

29 (c) Violation of this subchapter by a public employer shall be cause
30 for adverse personnel action against the supervisor or supervisors
31 responsible for the violation, including, but not limited to, suspension,
32 demotion, withholding of annual career service recognition payments, or, in
33 the case of serious and repeated violations, termination. Issuance of a cease
34 and desist order by the ~~director~~ secretary or his or her designee shall not
35 be a prerequisite for such adverse personnel action, but such action shall
36 only be taken in accordance with the civil service laws and rules.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36

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

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

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

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

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

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

(2) The ~~director~~ secretary or his or her designee may, upon his or her own motion, bring all necessary suits and institute such prosecutions as may be necessary to properly enforce this subchapter, and he or she shall not be required to give bond for cost or make appeal bonds.

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

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

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

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

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

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

11 ~~(c) The director shall give a bond in the sum of two thousand dollars~~
12 ~~(\$2,000) with sureties to be approved by the Secretary of the Department of~~
13 ~~Labor and Licensing, conditioned for the faithful discharge of the duties of~~
14 ~~his or her office.~~

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

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

19
20 SECTION 17. Arkansas Code § 11-2-108 is amended to read as follows:

21 11-2-108. ~~Director~~ Powers and duties generally.

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

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

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

31 (3) To direct, except as otherwise provided, make, or cause to
32 be made all necessary inspections to see that all laws and rules made
33 pursuant thereto that the division has the duty, power, and authority to
34 enforce are promptly and effectively carried out; and

35 (4) To make investigations, collect and compile statistical
36 information, and report upon conditions of labor generally and upon all

1 matters relating to the enforcement and effect of the provisions of this
2 subchapter and of the rules issued under this subchapter.

3
4 SECTION 18. Arkansas Code § 11-2-109 is amended to read as follows:

5 11-2-109. ~~Director~~— Intervention in and arbitration of labor
6 disputes.

7 (a) In addition to such other duties and powers 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, jurisdiction, and authority:

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

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

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

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

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

30 (c)(1) The Secretary of the Department of Labor and Licensing may
31 designate an employee of the division to act as chief mediator and may detail
32 other employees or persons not in the division from time to time to act as
33 his or her assistants for the purpose of executing these provisions.

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

36

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

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

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

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

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

17 (d) The rules of the ~~director~~ secretary or his or her designee shall
18 have the force and effect of law and shall be enforced by the ~~director~~
19 secretary or his or her designee in the same manner as the provisions of this
20 subchapter.

21
22 SECTION 20. Arkansas Code § 11-2-112 is amended to read as follows:

23 11-2-112. Promulgation of rules.

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

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

33 (2) Every rule adopted and every amendment or repeal shall be
34 published in such manner as the ~~director~~ secretary or his or her designee may
35 determine, and the ~~director~~ secretary or his or her designee shall deliver a
36 copy to every person making application therefor. The ~~director~~ secretary or

1 his or her designee shall include the text of each rule or amendment in an
2 appendix to the annual report of the Division of Labor next following the
3 adoption or amendment of the rule.

4
5 SECTION 21. Arkansas Code § 11-2-113 is amended to read as follows:

6 11-2-113. Variation of rule due to difficulties or hardship.

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

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

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

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

19
20 SECTION 22. Arkansas Code § 11-2-114 is amended to read as follows:

21 11-2-114. Judicial review of rules.

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

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

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

31 (b)(1) All rules of the ~~director~~ secretary or his or her designee
32 shall be prima facie lawful and reasonable and shall not be held invalid
33 because of any technical defect, provided there is substantial compliance
34 with the provisions of this subchapter.

35 (2) All rules shall be conclusively presumed to be lawful and
36 reasonable if the action is not commenced within thirty (30) days from the

1 date of the rule as provided in this section.

2
3 SECTION 23. Arkansas Code § 11-2-115 is amended to read as follows:
4 11-2-115. Employer records – Inspection.

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

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

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

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

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

23
24 SECTION 24. Arkansas Code § 11-2-116 is amended to read as follows:
25 11-2-116. Entry and inspection of workplace, etc.

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

32 (b) No employer or owner shall refuse to admit the ~~director~~ secretary
33 or his or her authorized representatives to his or her place of employment,
34 public building, or place of public assembly.

35
36 SECTION 25. Arkansas Code § 11-2-117(c), concerning safe places of

1 employment under the Division of Labor, is amended to read as follows:

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

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

15
16 SECTION 26. Arkansas Code § 11-2-118 is amended to read as follows:

17 11-2-118. Oaths, certifications, subpoenas, etc. – Enforcement by
18 contempt.

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

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

35
36 SECTION 27. Arkansas Code § 11-2-119 is amended to read as follows:

1 11-2-119. False statements made under oath deemed perjury.

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

7
8 SECTION 28. Arkansas Code § 11-2-120 is repealed.

9 ~~11-2-120. Annual report.~~

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

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

18
19 SECTION 29. Arkansas Code § 11-2-121(a), concerning agreements with
20 government agencies and the Division of Labor, is amended to read as follows:

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

27
28 SECTION 30. Arkansas Code § 11-2-122(b) concerning required
29 disclosures by an employer of the benefits available to their employees, is
30 amended to read as follows:

31 (b) The notification shall be made at such time and in such manner as
32 prescribed by rules promulgated by the ~~Director of the Division of Labor~~
33 Secretary of the Department of Labor and Licensing or his or her designee.

34
35 SECTION 31. Arkansas Code § 11-2-204(a), concerning records and
36 confidential information under the Arkansas Mediation and Conciliation

1 Service Nondisclosure Act, is amended to read as follows:

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

10
 11 SECTION 32. Arkansas Code § 11-2-205(b)(2), concerning compliance with
 12 subpoenas under the Arkansas Mediation and Conciliation Service Nondisclosure
 13 Act, is amended to read as follows:

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

24
 25 SECTION 33. Arkansas Code § 11-2-206(a)(1), concerning judicial review
 26 under the Arkansas Mediation and Conciliation Service Nondisclosure Act, is
 27 amended to read as follows:

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

32
 33 SECTION 34. Arkansas Code § 11-3-203(c), concerning the prohibition on
 34 requirements for a medical examination as a condition by any employer, is
 35 amended to read as follows:

36 (c) The ~~Director of the Division of Labor~~ Secretary of the Department

1 of Labor and Licensing or his or her designee shall administer and enforce
 2 this section, including without limitation, by:

3 (1) Adopting administrative rules; and

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

7
 8 SECTION 35. Arkansas Code § 11-4-203(9), concerning the definition of
 9 "wage" in the minimum wage law, is amended to read as follows:

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

16
 17 SECTION 36. Arkansas Code § 11-4-206 is amended to read as follows:

18 11-4-206. Penalties.

19 (a)(1) Any employer who willfully hinders or delays the ~~Director of~~
 20 ~~the Division of Labor~~ Secretary of the Department of Labor and Licensing or
 21 his or her authorized representative in the performance of his or her duties
 22 in the enforcement of this subchapter, willfully refuses to admit the
 23 ~~director~~ secretary or his or her authorized representative to any place of
 24 employment, willfully fails to make, keep, and preserve any records as
 25 required under the provisions of this subchapter, willfully falsifies any
 26 such record, willfully refuses to make the record accessible to the ~~director~~
 27 secretary or his or her authorized representative upon demand, willfully
 28 refuses to furnish a sworn statement of the record or any other information
 29 required for the proper enforcement of this subchapter to the ~~director~~
 30 secretary or his or her authorized representative upon demand, willfully
 31 fails to post a summary of this subchapter or a copy of any applicable rules
 32 as required by § 11-4-216, pays or agrees to pay minimum wages at a rate less
 33 than the rate applicable under this subchapter, or otherwise willfully
 34 violates any provision of this subchapter or of any rule issued under this
 35 subchapter shall be deemed in violation of this subchapter and shall be
 36 subject to a civil penalty of not less than fifty dollars (\$50.00) and not

1 more than one thousand dollars (\$1,000) for each violation.

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

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

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

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

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

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

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

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

36 (i) In addition to the civil penalty provided by this section, the

1 ~~director~~ secretary or his or her designee is authorized to petition any court
 2 of competent jurisdiction, without paying costs or giving bond for costs, to
 3 enjoin or restrain any person, firm, corporation, partnership, or association
 4 who violates the provisions of this subchapter or any rule issued thereunder.
 5

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

7 11-4-209. ~~Director of the Division of Labor~~ Secretary of the
 8 Department of Labor and Licensing – Powers and duties.

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

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

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

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

29 (d) The ~~director~~ secretary or his or her authorized representatives
 30 shall:

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

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

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

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

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

11 (3) Publish all rules promulgated pursuant to this subchapter;
12 and

13 (4) Otherwise implement and enforce the provisions of this
14 subchapter and the rules issued under this subchapter.

15
16 SECTION 38. Arkansas Code § 11-4-211(g), concerning overtime under the
17 minimum wage law, is amended to read as follows:

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

23 (1) Necessitating irregular hours of work;

24 (2) At a piece rate;

25 (3) Paying on a commission basis in a retail or service
26 establishment;

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

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

31 (6) Under a collective bargaining agreement.

32
33 SECTION 39. Arkansas Code § 11-4-212(b), concerning allowance for
34 gratuities under the minimum wage law, is amended to read as follows:

35 (b) In determining whether an employee received in gratuities the
36 amount claimed, the ~~Director of the Division of Labor~~ Secretary of the

1 Department of Labor and Licensing or his or her designee may require the
 2 employee to show to the satisfaction of the ~~director~~ secretary or his or her
 3 designee that the actual amount of gratuities received by him or her during
 4 any work week was less than the amount determined by the employer as the
 5 amount by which the wage paid the employee was deemed to be increased under
 6 this section.

7
 8 SECTION 40. Arkansas Code § 11-4-214 is amended to read as follows:
 9 11-4-214. Temporary special exemptions – Definition.

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

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

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

32 (c) For the purposes of this section, the term “work activities
 33 centers” shall mean centers planned and designed exclusively to provide
 34 therapeutic activities for clients with disabilities whose physical and
 35 mental impairment is so severe as to make their productivity capacities
 36 inconsequential.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36

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

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

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

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

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

11-4-216. Posting of law.

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

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

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

11-4-217. Records kept by employer.

(a) Every employer subject to any provision of this subchapter or of any rule issued under this subchapter shall make and keep for a period of not less than three (3) years in or about the premises wherein any employee is employed a record of the name, address, and occupation of each of his or her employees, the rate of pay, the amount paid each pay period to each employee, and such other information as the ~~Director of the Division of Labor~~ Secretary

1 of the Department of Labor and Licensing or his or her designee shall
2 prescribe by rule as necessary or appropriate for the enforcement of the
3 provisions of this subchapter or of the rules under this subchapter.

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

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

10
11 SECTION 44. Arkansas Code § 11-4-218(d), concerning the recovery of
12 wages under the minimum wage law, is amended to read as follows:

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

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

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

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

29
30 SECTION 45. Arkansas Code § 11-4-218(e)(2), concerning employee
31 complaints under the minimum wage law, is amended to read as follows:

32 (e)(2) If the employee brings an action under this subsection, then
33 any complaint before the ~~director~~ secretary or his or her designee by the
34 employee on the same matter shall be dismissed with respect to that employee.

35
36 SECTION 46. Arkansas Code § 11-4-219 is amended to read as follows:

1 11-4-219. Judicial review.

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

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

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

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

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

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

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

29 (e) Hearings in the circuit court on all appeals taken under the
30 provisions of this subchapter shall take precedence over all matters except
31 matters of the same character. The jurisdiction of the court shall be
32 exclusive, and its judgment and decree shall be final, except that it shall
33 be subject to review by the Supreme Court.

34 (f)(1) The commencement of proceedings under subsections (a)-(d) of
35 this section, unless specifically ordered by the court, shall not operate as
36 a stay of an administrative rule issued under the provisions of this

1 subchapter.

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

9

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

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

12 (a) Any employee covered by this subchapter may file a claim with the
13 ~~Director of the Division of Labor~~ Secretary of the Department of Labor and
14 Licensing or his or her designee charging that an employer has violated § 11-
15 4-210 or § 11-4-211 as to any employee or other person.

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

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

23

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

25 11-4-303. ~~Director of the Division of Labor~~ Authority to conduct
26 hearing.

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

32 (b) Upon motion of either employer or employee, the amount found to be
33 due may be paid in the presence of the ~~director~~ secretary or person
34 designated by him or her, and after final hearing by the ~~director~~ secretary
35 or person appointed by him or her, he or she shall file in the office of the
36 Division of Labor a copy of findings and facts and his or her award.

1 (c) The amount of the award of the ~~director~~ secretary or his or her
2 designee shall be presumed to be the amount of wages, if any, due and unpaid
3 to the employee.
4

5 SECTION 49. Arkansas Code § 11-4-304 is amended to read as follows:
6 11-4-304. Judicial review.

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

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

19 (c) Nothing in this section shall be construed so as to relieve an
20 unsuccessful defendant from paying costs.
21

22 SECTION 50. Arkansas Code § 11-4-306 is amended to read as follows:
23 11-4-306. Fees prohibited.

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

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

30 11-4-608. Penalties for violation of this section, §§ 11-4-607, and 11-
31 4-609 – 11-4-612.

32 Any employer who violates any provision of this section, §§ 11-4-607,
33 and 11-4-609 – 11-4-612, or who discharges or in any other manner
34 discriminates against any employee because the employee has made a complaint
35 to his or her employer, the ~~Director of the Division of Labor~~ Secretary of
36 the Department of Labor and Licensing, or any other person, has instituted or

1 caused to be instituted any proceedings under or related to this section,
2 §§ 11-4-607, and 11-4-609 – 11-4-612, or has testified or is about to testify
3 in any such proceeding shall be fined not more than five hundred dollars
4 (\$500) nor imprisoned more than one (1) year, or both.

5
6 SECTION 52. Arkansas Code § 11-4-609 is amended to read as follows:

7 11-4-609. Administration of this section, §§ 11-4-607 and 11-4-608,
8 and 11-4-610 – 11-4-612.

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

13
14 SECTION 53. Arkansas Code § 11-4-611(b)(4), concerning actions to
15 collect unpaid wages under the laws concerning wage discrimination, is
16 amended to read as follows:

17 (b)(4) At the request of any employee paid less than the wage to which
18 he or she is entitled under this section, §§ 11-4-607 – 11-4-610, and 11-4-
19 612, the ~~Director of the Division of Labor~~ Secretary of the Department of
20 Labor and Licensing or his or her designee may take an assignment of the wage
21 claim in trust for the employee and shall bring any legal action necessary to
22 collect the claim. The ~~director~~ secretary or his or her designee shall not be
23 required to pay any court costs in connection with the action.

24
25 SECTION 54. Arkansas Code § 11-5-101(c), concerning suitable
26 temperature, humidity, and air space required under the laws concerning
27 working conditions, is amended to read as follows:

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

34
35 SECTION 55. Arkansas Code § 11-5-107(a), concerning inspections of a
36 working place under the laws concerning working conditions, is amended to

1 read as follows:

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

8

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

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

25

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

29 (b)(1) The owner or owners, manager, superintendent, or other person
30 in control or management of any place or establishment covered by this
31 chapter, and directly affected by any finding or order provided for in §§ 11-
32 5-107 and 11-5-108, may, within fifteen (15) days from the date of the
33 delivery to him, her, or them of a copy of the order as provided for in §§
34 11-5-107 and 11-5-108, file a petition setting forth the particular cause of
35 objection to the order and findings in a court of competent jurisdiction
36 against the ~~Director of the Division of Labor~~ Secretary of the Department of

1 Labor and Licensing or his or her designee.

2
3 SECTION 58. Arkansas Code § 11-5-110 is amended to read as follows:

4 11-5-110. Order to correct conditions – Penalties for noncompliance.

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

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

23
24 SECTION 59. Arkansas Code § 11-5-112(b)(1), concerning separate
25 facilities for males and females required under the laws concerning working
26 conditions, is amended to read as follows:

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

31
32 SECTION 60. Arkansas Code § 11-5-307(a), concerning notification for
33 working near high voltage lines, is amended to read as follows:

34 (a)(1) When any person, firm, or corporation desires to temporarily
35 carry on any function, activity, work, or operation in closer proximity to
36 any energized overhead electrical line or conductor than permitted by this

1 subchapter, the person or persons responsible for the work to be done shall
 2 promptly notify the ~~Director of the Division of Labor~~ Secretary of the
 3 Department of Labor and Licensing or his or her designee and the operator or
 4 owner of the electrical lines in writing of the work to be performed and make
 5 appropriate arrangements with the operator of the electrical lines before
 6 proceeding with any work which would impair the clearances required by this
 7 subchapter.

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

12
 13 SECTION 61. Arkansas Code § 11-5-308(c)(4), concerning prohibited acts
 14 for work near high voltage lines, is amended to read as follows:

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

23
 24 SECTION 62. Arkansas Code § 11-6-103 is amended to read as follows:
 25 11-6-103. Penalty – Disposition of fines – Definition.

26 (a)(1) Any person, firm, corporation, partnership, association,
 27 parent, guardian, or custodian who employs or permits or suffers any child to
 28 be employed or to work in violation of this subchapter or §§ 11-12-101 – 11-
 29 12-105, or any rules issued thereunder, shall be subject to a civil penalty
 30 of not less than one hundred dollars (\$100) and not more than five thousand
 31 dollars (\$5,000) for each violation.

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

34 (b) The ~~Director of the Division of Labor~~ Secretary of the Department
 35 of Labor and Licensing or his or her designee shall determine the amount of
 36 such penalty and shall consider the appropriateness of such penalty to the

1 size of the business and the gravity of the violation.

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

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

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

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

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

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

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

29 (i)(1) In addition to the civil penalties provided for in subsection
30 (a) of this section and the criminal penalties provided for in subsection (h)
31 of this section, an employer who knowingly violates this subchapter and the
32 violation results in a serious physical injury to or death of a minor is,
33 upon conviction, guilty of a Class A misdemeanor.

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

36 (j) An employer that willfully engages in any of the following actions

1 is in violation of this subchapter and subject to a civil penalty of not less
 2 than one hundred dollars (\$100) and not more than five thousand dollars
 3 (\$5,000) for each violation:

4 (1) Hinders or delays the ~~director~~ secretary or his or her
 5 authorized representative in the performance of his or her duties in the
 6 enforcement of this subchapter; and

7 (2) Falsifies records related to child labor.

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

12
 13 SECTION 63. Arkansas Code § 11-6-107(b)(1), concerning prohibitions
 14 against certain kinds and places of work for children under sixteen years, is
 15 amended to read as follows:

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

24
 25 SECTION 64. Arkansas Code § 11-6-111 is amended to read as follows:

26 11-6-111. Inspection of workplace – Prosecution of violators.

27 (a) The ~~Director of the Division of Labor~~ Secretary of the Department
 28 of Labor and Licensing or his or her designee shall have the right to enter
 29 any building or premises for the purpose of inspection to ascertain whether
 30 any child is employed or permitted to work in violation of the provisions of
 31 this subchapter.

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

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

36 (3) The ~~director~~ secretary or his or her designee may revoke an

1 employment certificate for cause.

2

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

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

13

14 SECTION 66. Arkansas Code § 11-7-402 is amended to read as follows:

15 11-7-402. ~~Director of the Division of Labor~~ Secretary of the
16 Department of Labor and Licensing – Power to administer oaths.

17 (a) To more effectively carry out the intentions and purposes of this
18 section and §§ 11-7-409 – 11-7-414, the ~~Director of the Division of Labor~~
19 Secretary of the Department of Labor and Licensing or his or her designee may
20 administer oaths to all persons who are applicants, or who may vouch, in any
21 manner, for the previous service or qualifications of an applicant to obtain
22 for him or her a certificate under this section and §§ 11-7-409 – 11-7-414.

23 (b) A person who falsely testifies or swears to any matter material to
24 the examination or to the service or qualification of an applicant is guilty
25 of perjury.

26

27 SECTION 67. Arkansas Code § 11-7-404(a)(1), concerning certificates
28 pertaining to the regulation of mines, is amended to read as follows:

29 (a)(1) The ~~Director of the Division of Labor~~ Secretary of the
30 Department of Labor and Licensing or his or her designee shall grant
31 certificates after examination by the Division of Labor or a determination by
32 the division that the testing requirements have been satisfied in another
33 jurisdiction.

34

35 SECTION 68. Arkansas Code § 11-7-404(b)(3)(A), concerning emergencies
36 pertaining to the regulation of mines, is amended to read as follows:

1 (3)(A) In case of emergency, a mine owner, with consent of the
2 ~~director~~ secretary or his or her designee, may employ a trustworthy or
3 experienced man or woman who does not possess a certificate, for a period of
4 not more than thirty (30) days as mine foreman or fire boss.

5
6 SECTION 69. Arkansas Code § 11-7-405 is amended to read as follows:

7 11-7-405. Fire bosses, mine foremen, etc. – Duplicate certificate.

8 In case of loss or destruction of a certificate, the ~~Director of the~~
9 ~~Division of Labor~~ Secretary of the Department of Labor and Licensing or his
10 or her designee, upon satisfactory proof of the loss or destruction, may
11 issue a duplicate on the payment of the sum of one dollar (\$1.00).

12
13 SECTION 70. Arkansas Code § 11-7-406 is amended to read as follows:

14 11-7-406. Fire bosses, mine foremen, etc. – Revocation of certificate.

15 (a) All certificates issued pursuant to this subchapter may be revoked
16 by the ~~Director of the Division of Labor~~ Secretary of the Department of Labor
17 and Licensing or his or her designee after a hearing upon due notice to the
18 holder of the certificate and upon written charges preferred by the ~~director~~
19 secretary or by some interested person for violation of this section and §§
20 11-7-403 – 11-7-405 and 11-7-407.

21 (b)(1) A complaint may be filed against the holder of a certificate
22 for intoxication, mental disabilities, neglect of duty, or other sufficient
23 cause.

24 (2) The holder of the certificate so cancelled shall have the
25 right to appear before the ~~director~~ secretary or his or her designee after
26 the expiration of three (3) months and be reexamined if he or she shall first
27 satisfy the ~~director~~ secretary or his or her designee that the incapacity
28 complained of has ceased to exist.

29
30 SECTION 71. Arkansas Code § 11-7-410(a), concerning coal miners
31 pertaining to the regulation of mines, is amended to read as follows:

32 (a) It shall be unlawful for any person to work as a coal miner in any
33 coal mine in this state without first having a certificate of qualification
34 and competency to do so from the ~~Director of the Division of Labor~~ Secretary
35 of the Department of Labor and Licensing or his or her designee, nor shall
36 any person, firm, or corporation employ as a coal miner in his or her coal

1 mine in the State of Arkansas any person who does not hold a certificate, nor
 2 shall any mine foreman, overseer, or superintendent permit or suffer any
 3 person to be employed under him or her, or in any coal mine under his or her
 4 charge or supervision, as a coal miner in this state, except as provided in
 5 this act, who does not hold a certificate of qualification.

6
 7 SECTION 72. Arkansas Code § 11-7-411 is amended to read as follows:

8 11-7-411. Coal miners – Examination qualifications – Certificates.

9 (a) ~~The Director of the Division of Labor~~ Secretary of the Department
 10 of Labor and Licensing or his or her designee shall hold sufficient
 11 examinations each year in places to be determined by the ~~director~~ secretary
 12 or his or her designee, which, in his or her opinion, will be most convenient
 13 to applicants desiring to engage in the business of coal mining.

14 (b) All examinations held by the ~~director~~ secretary or his or her
 15 designee shall be conducted in the English language and shall be of a
 16 practical nature, so as to determine the competency and qualifications of
 17 each applicant.

18 (c) The ~~director~~ secretary or his or her designee shall:

19 (1) Examine under oath all persons who apply for certificates,
 20 except those regularly employed in the State of Arkansas and exempted under §
 21 11-7-409, as to their previous experience as coal miners; and

22 (2)(A) Grant certificates of competency and qualification to
 23 such applicants as the ~~director~~ secretary or his or her designee finds to be
 24 qualified.

25 (B) The certificate, when so issued, entitles the holder
 26 to be employed as, and to do the work of, a coal miner in this state.

27 (d)(1) A certificate of competency and qualification shall not be
 28 issued or delivered to any person under this act, unless:

29 (A) He or she first produces evidence of having had not
 30 less than two (2) years of practical experience working as a coal miner or
 31 working with a coal miner; and

32 (B) He or she is competent to mine coal in the coal mines
 33 of this state.

34 (2) In no case shall the applicant be deemed competent or
 35 qualified under this act unless he or she appears in person before the
 36 ~~director~~ secretary or his or her designee and orally answers correctly at

1 least twelve (12) practical questions propounded to him or her by the
2 ~~director~~ secretary or his or her designee pertaining to requirements and
3 qualifications of a practical coal miner.

4 (e) The ~~director~~ secretary or his or her designee shall keep an
5 accurate record of proceedings and meetings and in the record shall show a
6 correct detailed account of the examination of each applicant with the
7 questions asked and his or her answers, and the ~~director~~ secretary or his or
8 her designee shall keep the records open for the inspection of the parties in
9 interest.

10 (f) A miner's certificate granted under this act is not transferable,
11 and any effort to transfer the certificate shall be deemed a violation of
12 this act.

13 (g) The certificate shall be issued and signed by the ~~director~~
14 secretary or his or her designee.

15 (h)(1) Each applicant for the certificate provided for under this
16 section shall pay a fee of fifty cents (50¢) to the ~~director~~ secretary or his
17 or her designee at the time of making application and, if successful in the
18 examination, shall pay an additional fee of fifty cents (50¢) for the
19 certificate.

20 (2) All fees collected from applicants shall be paid into the
21 Coal Mine Examining Fund and paid out of the fund as other moneys are paid
22 out.

23
24 SECTION 73. Arkansas Code § 11-7-412(a), concerning temporary permits
25 for coal miners pertaining to the regulation of mines, is amended to read as
26 follows:

27 (a) A person making application for a coal miner's certificate of
28 competency and qualification shall be granted a temporary permit to work
29 until such time as an examination is held by the ~~Director of the Division of~~
30 ~~Labor~~ Secretary of the Department of Labor and Licensing or his or her
31 designee and if, in the judgment of the ~~director~~ secretary or his or her
32 designee, he or she is so qualified.

33
34 SECTION 74. Arkansas Code § 11-7-414 is amended to read as follows:

35 11-7-414. Coal miners – Duplicate certificate – Revocation of
36 certificate.

1 The ~~Director of the Division of Labor~~ Secretary of the Department of
2 Labor and Licensing or his or her designee shall possess powers to issue
3 duplicate certificates and revoke certificates in all cases as provided in §§
4 11-7-405 and 11-7-406.

5
6 SECTION 75. Arkansas Code § 11-10-718(b)(1)(B)(ii), concerning liens
7 under the Division of Workforce Services Law, is amended to read as follows:

8 (ii) All liens issued under this chapter by the
9 ~~Director of the Division of Labor~~ Secretary of the Department of Labor and
10 Licensing or his or her designee shall remain in full force and effect and
11 shall be fully enforceable by the Director of the Division of Workforce
12 Services.

13
14 SECTION 76. Arkansas Code § 11-11-101 is amended to read as follows:

15 11-11-101. Recruitment of labor by foreign labor agents.

16 (a) No foreign labor agent, labor bureau or employment agency, or any
17 other person shall enter this state and attempt to hire, induce, or take from
18 this state any labor, singularly or in groups, for any purpose, whether or
19 not a fee or charge is extracted from the worker, without first applying to
20 the ~~Director of the Division of Labor~~ Secretary of the Department of Labor
21 and Licensing or his or her designee for a license to do so and filing with
22 the ~~director~~ secretary or his or her designee:

23 (1) A statement as to where the labor is to be taken, for what
24 purpose, for what length of time, and whether transportation is to be paid to
25 and from the destination, if temporary;

26 (2) A statement of the financial standing of the employer
27 desiring the labor;

28 (3) An affidavit of authority to represent the employer in this
29 state; and

30 (4) Whatever other information the ~~director~~ secretary or his or
31 her designee may require.

32 (b)(1) The ~~director~~ secretary or his or her designee shall determine
33 whether the person desiring the labor from this state is a labor agent, labor
34 bureau, or employment agency and, if so, whether the applicant is qualified
35 to be licensed under the laws of this state and according to the provisions
36 of this section.

1 (2) The ~~director~~ secretary or his or her designee, after the
2 investigation, may refuse to license or register the applicant until the
3 applicant has complied with the provisions of this section.

4 (3) The applicant shall, in the event of unfavorable action by
5 the ~~director~~ secretary or his or her designee, have the right of appeal to
6 the proper court.

7 (c) This section is cumulative to all existing laws affecting the
8 hiring or employment of labor.

9
10 SECTION 77. Arkansas Code § 11-11-203 is amended to read as follows:
11 11-11-203. Penalty.

12 (a) The ~~Director of the Division of Labor~~ Secretary of the Department
13 of Labor and Licensing or his or her designee shall have authority to impose
14 a fine of not less than twenty-five dollars (\$25.00) nor more than five
15 hundred dollars (\$500) for violation of the provisions of this subchapter by
16 an employment agency or its employees or agents.

17 (b) The ~~director~~ secretary or his or her designee shall notify the
18 employment agency in writing of the reasons for imposition of a fine and at
19 that time shall make available to the employment agency a signed written
20 statement by any individual having filed a complaint with the ~~director~~
21 secretary or his or her designee relative to the matter for which a fine has
22 been imposed by the ~~director~~ secretary or his or her designee.

23 (c) The agency shall have the right to a hearing before the ~~director~~
24 secretary or his or her designee and the right to judicial review provided by
25 § 11-11-223 with respect to the fine.

26
27 SECTION 78. Arkansas Code § 11-11-204 is amended to read as follows:
28 11-11-204. ~~Director and division~~ Division of Labor – Powers and
29 duties.

30 (a) It shall be the duty of the Division of Labor, and it shall have
31 the power, jurisdiction, and authority to administer and enforce the
32 provisions of this subchapter.

33 (b) The ~~Director of the Division of Labor~~ Secretary of the Department
34 of Labor and Licensing or his or her duly authorized agent shall have the
35 power, jurisdiction, and authority to issue licenses to employment agencies,
36 agency managers, and counselors and to refuse to issue, revoke, or suspend

1 the licenses when, after due investigation, and in compliance with the
2 procedures set forth in §§ 11-11-221 and 11-11-222, the ~~director~~ secretary or
3 his or her duly authorized agent finds that the applicant is for good and
4 sufficient cause unfit to be an employment agent, agency manager, or
5 counselor within the meaning of this subchapter or any rules or orders
6 lawfully promulgated under this subchapter.

7 (c)(1) Complaints against any person, employment agent, agency
8 manager, or counselor may be made to the division orally or in writing.

9 (2) The ~~director~~ secretary or his or her duly authorized agent
10 shall have the power to compel attendance of witnesses by issuance of
11 subpoenas, administer oaths, direct production of documents and records, and
12 direct taking of testimony and evidence concerning all matters within the
13 jurisdiction of the division.

14 (3) The ~~director~~ secretary or his or her duly authorized agent
15 may order testimony to be taken by deposition in any proceeding pending
16 before the division at any stage of the proceeding.

17 (4) The ~~director~~ secretary or his or her duly authorized agent
18 shall at all reasonable times have access to, for the purpose of examination
19 and copying, the books, records, papers, and documents of any person being
20 investigated or proceeded against under the provisions of this subchapter, so
21 long as the books, records, papers, or documents sought to be inspected or
22 copied are reasonably related to the investigation or proceeding being
23 conducted by the ~~director~~ secretary or his or her duly authorized agent.

24 (5) The ~~director~~ secretary or his or her authorized agent shall,
25 upon application of any party to proceedings before the ~~director~~ secretary or
26 his or her duly authorized agent, issue to the party subpoenas requiring the
27 attendance and testimony of witnesses or the production of any books,
28 records, papers, or documents reasonably related to issues involved in
29 proceedings before the ~~director~~ secretary or his or her duly authorized agent
30 or an investigation conducted by the ~~director~~ secretary or his or her duly
31 authorized agent.

32 (6) If any person in proceedings before the ~~director~~ secretary
33 or his or her duly authorized agent or in investigations conducted by the
34 ~~director~~ secretary or his or her duly authorized agent disobeys or resists
35 any lawful order or process issued by the ~~director~~ secretary or his or her
36 authorized agents, or fails to produce, after being lawfully directed to do

1 so, any book, paper, record, or document, or refuses to appear and testify
2 after being subpoenaed to do so, the ~~director~~ secretary or his or her duly
3 authorized agent shall certify the facts to any court of competent
4 jurisdiction in the state or to the Pulaski County Circuit Court.

5 (7) The court shall have authority to conduct hearings and
6 punish any person for failure or refusal to testify or produce books, papers,
7 documents, or records subpoenaed or ordered by the ~~director~~ secretary or his
8 or her duly authorized agent as though the conduct constituted contempt of
9 court.

10 (8) Witnesses summoned by the ~~director~~ secretary or his or her
11 authorized agent shall be paid the same fees and mileage paid to witnesses in
12 the courts of this state.

13 (d)(1) The ~~director~~ secretary or his or her duly authorized agent may
14 prescribe such rules for the conduct of the business of private employment
15 agencies as necessary to implement this subchapter.

16 (2) These rules shall have the force and effect of law and shall
17 be enforced by the ~~director~~ secretary or his or her duly authorized agent in
18 the same manner as the provisions of this subchapter.

19 (3) Adoption of rules pursuant to this subsection shall be
20 carried out in compliance with the Arkansas Administrative Procedure Act, §
21 25-15-201 et seq.

22 (e) The division shall have authority to investigate employment
23 agents, agency managers, and counselors. The division shall have the right to
24 examine records required by law to be kept and maintained by employment
25 agents, agency managers, and counselors and to examine the offices where the
26 business is or shall be conducted by them.

27 (f) The division may seek to recover in a court of competent
28 jurisdiction fees charged or collected in violation of this subchapter.

29
30 SECTION 79. Arkansas Code § 11-11-208(b)(2), concerning the license
31 required for a private employment agency, is amended to read as follows:

32 (2) In addition to the penalties described in subdivision (b)(1)
33 of this section, upon petition of the ~~Director of the Division of Labor~~
34 Secretary of the Department of Labor and Licensing or his or her designee,
35 any court in the state having the statutory power to enjoin or restrain shall
36 have jurisdiction to restrain and enjoin any person who engages in the

1 business of or acts as an employment agent, agency manager, or counselor
2 without having first procured a license for so engaging or acting.

3
4 SECTION 80. Arkansas Code § 11-11-209 is amended to read as follows:

5 11-11-209. Certificate of exemption required for certain
6 organizations.

7 (a) Bona fide nursing schools, nurses' registries, management
8 consulting firms, business schools, vocational schools whose primary function
9 and purpose is training and education, and resume services shall obtain from
10 the ~~Director of the Division of Labor~~ Secretary of the Department of Labor
11 and Licensing or his or her designee a certificate of exemption from the
12 requirements of this subchapter.

13 (b) In connection with issuance of a certificate of exemption and with
14 respect to an organization's continued eligibility for a previously issued
15 certificate of exemption, the ~~director~~ secretary or his or her designee shall
16 have those investigative powers conferred by § 11-11-204.

17
18 SECTION 81. Arkansas Code § 11-11-210(b), concerning an application
19 for an employment counselor license, is amended to read as follows:

20 (b)(1) Every applicant for an initial license for employment counselor
21 shall file with the Division of Labor a written application on a form
22 prescribed and furnished by the ~~Director of the Division of Labor~~ Secretary
23 of the Department of Labor and Licensing or his or her designee.

24 (2) The applicant shall file at least two (2) letters of
25 character reference from persons of reputed business or professional
26 integrity.

27 (3) This application shall contain information prescribed by the
28 ~~director~~ secretary or his or her designee.

29
30 SECTION 82. Arkansas Code § 11-11-211 is amended to read as follows:

31 11-11-211. Agency manager license – Application – Qualifications.

32 (a) To be eligible to apply for a license to act as an agency manager,
33 the applicant shall be:

- 34 (1) A citizen of the United States;
35 (2) ~~Of good moral character;~~
36 (3) At least twenty-one (21) years of age;

1 ~~(4)~~(3) A person whose license has not been revoked within two
2 (2) years from the date of the application;

3 ~~(5)~~(4) A person who has completed the twelfth grade, except that
4 the ~~Director of the Division of Labor~~ Secretary of the Department of Labor
5 and Licensing or his or her designee may establish proof necessary to him or
6 her that the applicant is possessed of a twelfth-grade education in terms of
7 intellectual competency, judgment, and achievement; and

8 ~~(6)~~(5) A person who demonstrates business integrity, financial
9 responsibility, and judgment.

10 (b)(1) Every applicant for an initial license for agency manager shall
11 file with the Division of Labor a written application on a form prescribed
12 and furnished by the ~~director~~ secretary or his or her designee.

13 (2) The applicant shall file at least two (2) letters of
14 character reference from persons of reputed business or professional
15 integrity.

16 (3) This application shall contain information prescribed by the
17 ~~director~~ secretary or his or her designee.

18
19 SECTION 83. Arkansas Code § 11-11-212 is amended to read as follows:
20 11-11-212. Employment agency license – Application – Qualifications.

21 (a) To be eligible to apply for a license to operate an employment
22 agency, the applicant shall be:

23 (1) A citizen of the United States;

24 (2) ~~Of good moral character;~~

25 ~~(3)~~ At least twenty-one (21) years of age;

26 ~~(4)~~(3) A person whose license has not been revoked within two
27 (2) years from the date of the application;

28 ~~(5)~~(4) A person who has completed the twelfth grade, except that
29 the ~~Director of the Division of Labor~~ Secretary of the Department of Labor
30 and Licensing or his or her designee may establish proof necessary to him or
31 her that the applicant is possessed of a twelfth-grade education in terms of
32 intellectual competency, judgment, and achievement; and

33 ~~(6)~~(5) A person who demonstrates business integrity, financial
34 responsibility, and judgment.

35 (b)(1) Every applicant for an initial employment agency license and
36 every applicant for a renewal license shall file with the ~~Director of the~~

1 ~~Division of Labor~~ secretary or his or her designee a completed application on
2 a form prescribed and furnished by the ~~Director of the Division of Labor~~
3 secretary or his or her designee.

4 (2)(A) The application shall be signed by the applicant and
5 sworn to before anyone qualified by law to administer oaths.

6 (B) If the applicant is a corporation, the application
7 shall state the names and home addresses of all shareholders, officers, and
8 directors of the corporation and shall be signed and sworn to by the
9 president, treasurer, and secretary thereof.

10 (C) If the applicant is a partnership, the application
11 shall state the names and home addresses of all partners therein and shall be
12 signed and sworn to by all of them.

13 (3) The applicant shall file at least two (2) letters of
14 character reference from persons of reputed business or professional
15 integrity.

16 (4) This application shall also contain such other information
17 as the ~~Director of the Division of Labor~~ secretary or his or her designee may
18 prescribe.

19
20 SECTION 84. Arkansas Code § 11-11-213 is amended to read as follows:

21 11-11-213. Employment agency license – Bond required – Action on the
22 bond.

23 (a)(1) Every application for issuance or renewal of an employment
24 agency's license shall be accompanied by a bond in the sum of five thousand
25 dollars (\$5,000) with a duly licensed surety company or companies authorized
26 to do business in this state.

27 (2) The terms and conditions of the bond shall be approved by
28 the ~~Director of the Division of Labor~~ Secretary of the Department of Labor
29 and Licensing or his or her designee.

30 (3) The bond shall be conditioned that the employment agency and
31 each member, employee, shareholder, director, or officer of a person, firm,
32 partnership, corporation, or association operating as the employment agency
33 will not violate the provisions of this subchapter or violate rules or orders
34 lawfully promulgated by the ~~director~~ secretary or his or her designee or
35 violate the terms of any contract made by the employment agent in the conduct
36 of its business.

1 (b)(1) If any person shall be aggrieved by the misconduct of any
 2 licensee, that person may maintain an action in his or her own name upon the
 3 bond of the employment agency in any court of competent jurisdiction or in
 4 the Pulaski County Circuit Court.

5 (2)(A) All claims shall be assignable, and the assignee shall be
 6 entitled to the same remedies upon the bond of the licensee as the person
 7 aggrieved would have been entitled to if the claim had not been assigned.

8 (B) Any claim so assigned may be enforced in the name of
 9 the assignee.

10 (3) Any remedies given by this section shall not be exclusive of
 11 any other remedy that would otherwise exist.

12 (c) Action on the bond required by this section may be maintained by
 13 the ~~director~~ secretary or his or her designee in the name of the state in any
 14 court of competent jurisdiction or in the Pulaski County Circuit Court, for
 15 the benefit of any person or persons aggrieved by the misconduct of the
 16 licensee.

17 (d)(1) If any licensee fails to file a new bond with the Division of
 18 Labor within thirty (30) days after notice of cancellation by the surety of
 19 the bond required by this section, the license issued to the principal under
 20 the bond is suspended until such time as a new surety bond is filed with and
 21 approved by the ~~director~~ secretary or his or her designee.

22 (2) A person whose license is suspended pursuant to this
 23 subsection shall not carry on the business of an employment agency during the
 24 period of the suspension.

25
 26 SECTION 85. Arkansas Code § 11-11-214 is amended to read as follows:

27 11-11-214. Investigation of license applicant ~~by director~~.

28 (a) Upon filing of an application for a license as provided in this
 29 subchapter, the ~~Director of the Division of Labor~~ Secretary of the Department
 30 of Labor and Licensing or his or her designee shall cause an investigation to
 31 be made regarding the ~~character~~, business integrity, and financial
 32 responsibility of the license applicant.

33 (b) The ~~director~~ secretary or his or her designee shall also determine
 34 the suitability or unsuitability of the applicant's proposed office location.

35 (c) An application for an employment agency's, agency manager's, or
 36 employment counselor's license shall be rejected by the ~~director~~ secretary or

1 his or her designee if it is found that any person named in the license
2 ~~application is not of good moral character, fails to possess~~ business
3 integrity, or financial responsibility or if there is good and sufficient
4 reason within the meaning and purpose of this subchapter for rejecting the
5 application.

6
7 SECTION 86. Arkansas Code § 11-11-215(b) and (c), concerning the scope
8 of an employment agency license, are amended to read as follows:

9 (b) No employment agent shall permit any person not mentioned in the
10 license or license application to become a member, officer, director,
11 shareholder, or partner in the conduct of the business of the employment
12 agent unless written consent of the ~~Director of the Division of Labor~~
13 Secretary of the Department of Labor and Licensing or his or her designee and
14 written consent of the surety on the bond required by this subchapter shall
15 first be obtained.

16 (c) The location of an employment agency shall not be changed without
17 written consent from the ~~Director of the Division of Labor~~ Secretary of the
18 Department of Labor and Licensing or his or her designee, and a new license
19 application shall be required for any change of office location in excess of
20 twenty-five (25) miles.

21
22 SECTION 87. Arkansas Code § 11-11-216(a)(1)(A), concerning the
23 licensing examination for certain employment licenses, is amended to read as
24 follows:

25 (a)(1)(A) Before the ~~Director of the Division of Labor~~ Secretary of
26 the Department of Labor and Licensing or his or her designee issues a license
27 to an applicant for a permanent employment agent's, permanent agency
28 manager's, or permanent counselor's license, the applicant shall be required
29 to successfully complete a written examination prepared by the ~~director~~
30 secretary or his or her designee.

31
32 SECTION 88. Arkansas Code § 11-11-218 is amended to read as follows:

33 11-11-218. Temporary licenses.

34 (a)(1) The ~~Director of the Division of Labor~~ Secretary of the
35 Department of Labor and Licensing or his or her designee shall have authority
36 to issue a temporary license for operation of a private employment agency,

1 which shall be valid for no more than ninety (90) days, upon submission by
2 the applicant for the license of:

3 (A) A properly completed application form furnished and
4 approved by the ~~director~~ secretary or his or her designee;

5 (B) Submission of evidence of the applicant's compliance
6 with the bonding requirements of this subchapter; and

7 (C) Payment of a temporary license fee of one hundred
8 dollars (\$100).

9 (2) The temporary license may be issued only if, after
10 investigation, it reasonably appears that the applicant will meet the
11 qualifications for a permanent private employment agency license.

12 (b)(1) The ~~director~~ secretary or his or her designee shall have
13 authority to issue temporary licenses for agency managers and employment
14 counselors, which shall be valid for no more than ninety (90) days, upon
15 submission by the applicant for such license of:

16 (A) A properly completed application form, furnished and
17 approved by the ~~director~~ secretary or his or her designee; and

18 (B) Payment of a temporary license fee of ten dollars
19 (\$10.00).

20 (2) The temporary licenses for agency managers and employment
21 counselors may be issued only if, after investigation, it reasonably appears
22 that the applicant will meet the qualifications for a permanent license as
23 agency manager or employment counselor.

24 (3) Temporary licenses issued to agency managers and employment
25 counselors are nontransferable and are automatically rescinded upon
26 suspension or termination of the employment of the agency manager or
27 employment counselor.

28 (4) The ~~director~~ secretary or his or her designee shall approve
29 or reject an application for a temporary agency manager's license or
30 temporary employment counselor's license within five (5) days after receipt
31 of a properly completed application for the license.

32
33 SECTION 89. Arkansas Code § 11-11-219(b), concerning the renewal of
34 licenses pertaining to private employment agencies, is amended to read as
35 follows:

36 (b) Applications for renewal of all licenses provided by this

1 subchapter must be filed with the ~~Director of the Division of Labor~~ Secretary
2 of the Department of Labor and Licensing or his or her designee no later than
3 thirty (30) days prior to expiration of the license.
4

5 SECTION 90. Arkansas Code § 11-11-220(a)(2), concerning the cessation
6 of a private employment agency business by licensee, is amended to read as
7 follows:

8 (2)(A) When one (1) or more individuals, on the basis of whose
9 qualifications an agency license has been obtained, ceases to be connected
10 with the licensed business for any reason whatsoever, the agency business may
11 be carried on for a temporary period not to exceed thirty (30) days, under
12 such terms and conditions as the ~~Director of the Division of Labor~~ Secretary
13 of the Department of Labor and Licensing or his or her designee shall provide
14 by rule for the orderly closing of the business or the replacement and
15 qualification of a new member, partner, or corporate officer, director, or
16 shareholder.

17 (B) The agency's authorization to continue to do business
18 under this subchapter beyond the thirty-day period provided in this
19 subdivision (a)(2) shall be contingent upon approval by the ~~Director of the~~
20 ~~Division of Labor~~ Secretary of the Department of Labor and Licensing or his
21 or her designee of any new member, principal, partner, officer, director, or
22 shareholder.
23

24 SECTION 91. Arkansas Code § 11-11-221 is amended to read as follows:

25 11-11-221. Issuance, refusal, suspension, or revocation of license –
26 Grounds.

27 (a) The ~~Director of the Division of Labor~~ Secretary of the Department
28 of Labor and Licensing or his or her designee shall issue a license as an
29 employment agent, agency manager, or counselor to any person who qualifies
30 for the license under the terms of this subchapter.

31 (b) The ~~director~~ secretary or his or her designee may, in addition,
32 refuse to issue a license to any person or may suspend or revoke the license
33 of any employment agent, agency manager, or employment counselor or impose
34 administrative fines as provided for in § 11-11-203 when the ~~director~~
35 secretary or his or her designee finds that any of the following conditions
36 exist:

1 (1) That the employment agent, agency manager, or counselor has
2 violated any of the provisions of this subchapter;

3 (2) That the employment agent, agency manager, or counselor has
4 violated any of the rules or other orders lawfully promulgated by the
5 ~~director~~ secretary or his or her designee;

6 (3) That the employment agent, agency manager, or counselor has
7 violated the conditions of the bond required by § 11-11-213;

8 (4) That the person, employment agent, agency manager, or
9 employment counselor has engaged in a fraudulent, deceptive, or dishonest
10 practice;

11 (5) That the person, employment agent, agency manager, or
12 employment counselor has been legally adjudicated incompetent; or

13 (6) That the applicant is for good and sufficient cause unfit to
14 be an employment agent, agency manager, or employment counselor within the
15 meaning of this subchapter or of any of the rules or orders lawfully
16 promulgated by the ~~director~~ secretary or his or her designee.

17 (c) This section and § 11-11-222 shall not be construed to relieve any
18 person from civil liability or from criminal prosecution under the provisions
19 of this subchapter or under other laws of this state.

20
21 SECTION 92. Arkansas Code § 11-11-222 is amended to read as follows:

22 11-11-222. Refusal, suspension, or revocation of license – Notice of
23 hearing.

24 (a)(1) The ~~Director of the Division of Labor~~ Secretary of the
25 Department of Labor and Licensing or his or her designee may not refuse to
26 issue a license or suspend or revoke a license unless it furnishes the
27 person, employment agent, agency manager, or employment counselor with a
28 written statement of the charges against him or her and affords him or her an
29 opportunity to be heard on the charges.

30 (2) At the time that written charges are furnished to an
31 employment agency, the ~~director~~ secretary or his or her designee shall make
32 available to the agency a signed written statement by any individual having
33 filed a complaint with the ~~director~~ secretary or his or her designee relative
34 to the matter for which charges have been filed by the ~~director~~ secretary or
35 his or her designee.

36 (3) The agency shall be given at least twenty (20) days' written

1 notice of the date and time of the hearing. The notice shall conform to the
2 standards for notices set forth in the Arkansas Administrative Procedure Act,
3 § 25-15-201 et seq.

4 (4) The notice shall be sent by certified mail, return receipt
5 requested, to the address of the person as shown on his or her application
6 for license, or it may be served in the manner in which a summons is served
7 in civil cases commenced in the circuit courts of this state.

8 (b)(1) At the time and place fixed for the hearing, the ~~director~~
9 secretary or his or her designee shall hold the hearing and thereafter make
10 his or her order either dismissing the charges or refusing, suspending, or
11 revoking the license.

12 (2)(A) At the hearing, the accused shall have the right to
13 appear personally and by counsel and to cross-examine witnesses against him
14 or her.

15 (B)(i) He or she shall be allowed to produce evidence and
16 witnesses in his or her defense and shall have the right to have witnesses
17 subpoenaed.

18 (ii) The subpoenas shall be issued by the ~~director~~
19 secretary or his or her designee.

20 (c)(1) A stenographic record of all proceedings shall be made, and a
21 transcript of the proceedings shall be made if desired by the Division of
22 Labor or by the accused.

23 (2) The transcript shall be paid for by the party ordering it.

24
25 SECTION 93. Arkansas Code § 11-11-223 is amended to read as follows:

26 11-11-223. Judicial review of ~~director's~~ administrative orders.

27 (a) If the ~~Director of the Division of Labor~~ Secretary of the
28 Department of Labor and Licensing or his or her designee refuses to grant a
29 license, suspends or revokes a license that has been granted, or imposes an
30 administrative fine as provided in §§ 11-11-213, 11-11-221, and 11-11-222,
31 the person adversely affected or aggrieved by the order of the ~~director~~
32 secretary or his or her designee issued pursuant to the provisions of §§ 11-
33 11-221 and 11-11-222 may obtain a review of the order.

34 (b) The order may be brought in the circuit court in the judicial
35 district in which the violation is alleged to have occurred, where the
36 employment agent, manager, or counselor worked, or in the Pulaski County

1 Circuit Court or, if the aggrieved person is a nonresident of the state, in
2 the Pulaski County Circuit Court.

3 (c)(1) The review may be obtained by filing in the court within thirty
4 (30) days following the issuance of the order a written petition praying that
5 the order be modified or set aside.

6 (2)(A) A copy of the petition shall be forthwith transmitted by
7 the clerk of the court to the ~~Division of Labor~~ secretary or his or her
8 designee.

9 (B) Thereupon, the ~~division~~ secretary or his or her
10 designee shall file in the court the record of proceedings before the
11 division.

12 (d) Upon the filing, the court shall have jurisdiction of the
13 proceedings and of the questions determined therein and shall have power to
14 grant such temporary relief or restraining order as it deems just and proper
15 and to make and enter upon the pleadings, testimony, and proceedings set
16 forth in the record a decree affirming, modifying, or setting aside, in whole
17 or in part, the order of the ~~director~~ secretary or his or her designee and
18 enforcing the same to the extent that the order is affirmed.

19 (e) Commencement of proceedings under this section shall not, unless
20 ordered by the court, operate as a stay of the order of the ~~director~~
21 secretary or his or her designee.

22 (f)(1) No objection which has not been urged before the ~~director~~
23 secretary or his or her designee shall be considered by the court.

24 (2) The findings of the ~~director~~ secretary or his or her
25 designee with respect to questions of fact, if supported by substantial
26 evidence on the record considered as a whole, shall be conclusive.

27 (g)(1) If any party shall apply to the court for leave to adduce
28 additional evidence and shall show to the satisfaction of the court that the
29 additional evidence is material and that there were reasonable grounds for
30 the failure to adduce the evidence in the hearing before the ~~director~~
31 secretary or his or her designee, the court may order the additional evidence
32 to be taken before the ~~director~~ secretary or his or her designee and made a
33 part of the record.

34 (2)(A) The ~~director~~ secretary or his or her designee may modify
35 his or her findings as to the facts or make new findings, by reason of
36 additional evidence so taken and filed, and the ~~director~~ secretary or his or

1 her designee shall file the modified or new findings with the court.

2 (B) The findings with respect to questions of fact, if
3 supported by substantial evidence on the record considered as a whole, shall
4 be conclusive.

5 (h) Upon the filing of the record with it, the jurisdiction of the
6 court shall be exclusive, and its judgment and decree shall be final, except
7 that it shall be subject to review by the Supreme Court.

8 (i)(1) The ~~division~~ secretary or his or her designee shall certify the
9 record of its proceedings if the party commencing the proceedings shall pay
10 to it the cost of preparing and certifying the records, including the
11 recording and transcribing of all testimony introduced in the proceedings.

12 (2) If payment of the costs of preparing and certifying the
13 records, including the recording and transcribing of all testimony introduced
14 in the proceedings, is not made by the party commencing the proceedings for
15 review within ten (10) days after notice from the ~~division~~ secretary or his
16 or her designee of the cost of preparing and certifying the record, the
17 circuit court in which the proceeding is pending, on motion of the ~~director~~
18 secretary or his or her designee, shall dismiss the petition.

19
20 SECTION 94. Arkansas Code § 11-11-227(c)(1), concerning fee
21 restrictions and requirements pertaining to private employment agencies, is
22 amended to read as follows:

23 (c)(1) When a dispute concerning a fee exists, the Division of Labor
24 may conduct an investigation to determine all of the facts concerning the
25 dispute. Thereafter, the ~~Director of the Division of Labor~~ Secretary of the
26 Department of Labor and Licensing or his or her designee shall issue a
27 decision and order resolving the dispute.

28
29 SECTION 95. Arkansas Code §11-12-104(b), concerning restrictions on the
30 employment of children in the entertainment industry, is amended to read as
31 follows:

32 (b) No child under sixteen (16) years of age may be employed in the
33 entertainment industry:

34 (1) In a role or in an environment deemed to be hazardous or
35 detrimental to the health, morals, education, or welfare of the child as
36 determined by the ~~Director of the Division of Labor~~ Secretary of the

1 Department of Labor and Licensing or his or her designee;

2 (2) When the child is required to use a dressing room that is
3 simultaneously occupied by an adult or by other children of the opposite sex;

4 (3) When the child is not provided with a suitable place to rest
5 or play;

6 (4) When the parent or guardian of the child is prevented from
7 being present at the scene of employment during all the times the child is
8 working;

9 (5) When the parent or guardian of the child is prevented from
10 being within sight and sound of the child; and

11 (6) Without a permit issued by the ~~director~~ secretary or his or
12 her designee and the written consent of the child's parent or guardian for
13 the issuance of the permit.

14

15 SECTION 96. Arkansas Code § 11-12-105 is amended to read as follows:
16 11-12-105. Implementation and enforcement.

17 The ~~Director of the Division of Labor~~ Secretary of the Department of
18 Labor and Licensing shall have the authority to:

19 (1) Promulgate rules for the implementation of this chapter;

20 (2) Suspend or revoke a permit for the employment of a child in
21 the entertainment industry for cause;

22 (3) Enter or authorize his or her representative to enter and
23 inspect any place of employment where children work, rest, or play; and

24 (4) Otherwise enforce and implement the provisions of this
25 chapter.

26

27 SECTION 97. Arkansas Code § 11-14-112 is amended to read as follows:
28 11-14-112. Rating plans based on drug-free workplace program
29 participation.

30 The Insurance Commissioner shall approve rating plans for workers'
31 compensation insurance that give specific identifiable consideration in the
32 setting of rates to employers that implement a drug-free workplace program
33 pursuant to rules adopted by the Workers' Health and Safety Division. The
34 plans ~~must take effect January 1, 2000,~~ must be actuarially sound, and must
35 state the savings anticipated to result from the drug testing. The credit
36 shall be at least five percent (5%) unless the Insurance Commissioner

1 determines that five percent (5%) is actuarially unsound. The Insurance
 2 Commissioner is also authorized to develop a schedule of premium credits for
 3 workers' compensation insurance for employers who have safety programs that
 4 attain certain criteria for safety programs. The Insurance Commissioner shall
 5 consult with the ~~Director of the Division of Labor~~ Secretary of the
 6 Department of Labor and Licensing or his or her designee in setting such
 7 criteria.

8
 9 SECTION 98. Arkansas Code § 17-28-103 is amended to read as follows:
 10 17-28-103. Disposition of funds.

11 All funds received by the Board of Electrical Examiners of the State of
 12 Arkansas under the provisions of this chapter shall be deposited as special
 13 revenues into the State Treasury to the credit of the Department of Labor and
 14 Licensing Special Fund, there to be used by the ~~Division of Labor~~ Department
 15 of Labor and Licensing in carrying out the functions, powers, and duties as
 16 set out in this chapter and to defray the costs of the maintenance,
 17 operation, and improvements required by the ~~division~~ department in carrying
 18 out the functions, powers, and duties otherwise imposed by law on the
 19 ~~division~~ department or the ~~Director of the Division of Labor~~ Secretary of the
 20 Department of Labor and Licensing or his or her designee.

21
 22 SECTION 99. Arkansas Code § 20-23-103 is amended to read as follows:
 23 20-23-103. Enforcement.

24 (a) The criminal penalties provided by this chapter shall be enforced
 25 by the prosecuting attorney of each judicial district. The administrative
 26 penalties provided by this chapter shall be imposed pursuant to rules of the
 27 ~~Director of the Division of Labor~~ Secretary of the Department of Labor and
 28 Licensing or his or her designee.

29 (b) The ~~director~~ secretary or his or her designee may collect an
 30 administrative penalty imposed pursuant to this chapter in a civil action in
 31 a court of competent jurisdiction, and he or she shall not be required to pay
 32 costs or to enter a bond for payment of costs.

33
 34 SECTION 100. Arkansas Code § 20-23-104(a), concerning continuous
 35 monitoring pertaining to boiler safety, is amended to read as follows:

36 (a)(1) All boilers subject to the provisions of this chapter shall be

1 continuously monitored by mechanical and electronic devices approved by the
 2 ~~Director of the Division of Labor~~ Secretary of the Department of Labor and
 3 Licensing or his or her designee.

4 (2) When a plant is in operation or when any public building is
 5 occupied, the boilers shall be under regular attendance by a boiler operator
 6 unless otherwise exempt.

7
 8 SECTION 101. Arkansas Code § 20-23-105 is amended to read as follows:
 9 20-23-105. Disposition of funds.

10 (a) All money received under this chapter shall be paid to the
 11 Treasurer of State, who shall place this money to the credit of the
 12 Department of Labor and Licensing Special Fund, there to be used by the
 13 Department of Labor and Licensing in carrying out the functions, powers, and
 14 duties as set out in this chapter and to defray the costs of the maintenance,
 15 operation, and improvements required by the department in carrying out the
 16 functions, powers, and duties otherwise imposed by law on the department or
 17 the ~~Director of the Division of Labor~~ Secretary of the Department of Labor
 18 and Licensing or his or her designee.

19 (b) The ~~director~~ secretary or his or her designee may issue vouchers
 20 for salaries and expenses of the Boiler Inspection Division when proper
 21 appropriation has been made for the expenditures.

22
 23 SECTION 102. Arkansas Code § 20-23-202(a) and (b), concerning boiler
 24 inspectors pertaining to boiler safety, are amended to read as follows:

25 (a)(1) When the office of Chief Inspector of the Boiler Inspection
 26 Division becomes vacant, the ~~Director of the Division of Labor~~ Secretary of
 27 the Department of Labor and Licensing or his or her designee shall employ a
 28 citizen of the State of Arkansas to be chief inspector.

29 (2) The chief inspector shall have at the time of employment not
 30 less than ten (10) years' experience in the construction, maintenance,
 31 installation, and repair or inspection of high pressure boilers and unfired
 32 pressure vessels.

33 (b)(1)(A) The ~~director~~ secretary or his or her designee is authorized
 34 and empowered to employ a technical assistant and deputy inspectors of
 35 boilers.

36 (B) Inspectors of steam boilers and unfired pressure

1 vessels shall have had at the time of employment not less than five (5)
2 years' experience in the construction, maintenance, installation, and repair
3 of high pressure boilers and unfired pressure vessels or possess a currently
4 valid commission from the National Board of Boiler and Pressure Vessel
5 Inspectors.

6 (C)(i) Inspectors of steam boilers and unfired pressure
7 vessels also shall have passed a written examination.

8 (ii) The examination shall conform to standards not
9 exceeding those prescribed by the Boiler and Pressure Vessel Code of the
10 American Society of Mechanical Engineers.

11 (iii) The examination shall test the inspector's
12 knowledge of the construction, installation, maintenance, and repair of
13 boilers and their appurtenances.

14 (2) The ~~director~~ secretary or his or her designee is also
15 empowered to employ clerical and administrative employees, as well as other
16 inspectors, as necessary to perform the work of the Boiler Inspection
17 Division.

18 (3) The salaries are to be approved by the General Assembly.
19

20 SECTION 103. Arkansas Code § 20-23-203(c), concerning a chief
21 inspector's duty to inspect and enforce pertaining to boiler safety, is
22 amended to read as follows:

23 (c)(1) The chief inspector shall enforce the laws of the state
24 governing the use of boilers and unfired pressure vessels. He or she shall
25 examine into and report to the ~~Director of the Division of Labor~~ Secretary of
26 the Department of Labor and Licensing or his or her designee the causes of
27 boiler explosions which occur within the state.

28 (2) He or she shall keep in his or her office a complete and
29 accurate record of the names of all owners or operators of boilers inspected
30 by the Boiler Inspection Division, together with the location, make, type,
31 dimensions, age, condition, pressure allowed upon, and date of the last
32 inspection of all boilers and shall make an annual report thereon to the
33 ~~director~~ secretary or his or her designee.
34

35 SECTION 104. Arkansas Code § 20-23-301 is amended to read as follows:
36 20-23-301. Certificate of inspection required – Application of rules

1 and standards – Penalties.

2 (a)(1) No owner or user of a boiler or pressure vessel or engineer or
3 fireman in charge of a boiler or pressure vessel shall operate or allow the
4 boiler or pressure vessel to be operated without a certificate of inspection
5 issued by the ~~Director of the Division of Labor~~ Secretary of the Department
6 of Labor and Licensing or his or her designee or shall allow a greater
7 pressure in the boiler or pressure vessel than is allowed by the certificate
8 of inspection.

9 (2)(A) All boilers and pressure vessels installed or in
10 operation in this state shall conform to those rules and standards that shall
11 from time to time be adopted by the Boiler Inspection Division with the
12 approval of the ~~director~~ secretary or his or her designee.

13 (B) The rules and standards shall not exceed those set out
14 in the several sections of the Boiler and Pressure Vessel Code of the
15 American Society of Mechanical Engineers and shall have the force of law
16 immediately upon their approval by the ~~director~~ secretary or his or her
17 designee.

18 (3) No person shall operate or cause to be operated any boiler
19 or unfired pressure vessel on which the certificate of inspection has been
20 suspended or the operation of which has been forbidden by an inspector as
21 provided in §§ 20-23-203, 20-23-306, 20-23-310, 20-23-401, and 20-23-402.

22 (4)(A) All pressure piping installed in this state shall conform
23 to those rules and standards that shall from time to time be adopted by the
24 Boiler Inspection Division with the approval of the ~~director~~ secretary or his
25 or her designee.

26 (B) The rules and standards shall not exceed those set out
27 in the American Society of Mechanical Engineers Code for Pressure Piping,
28 Power Piping Code, B31.1.

29 (b) Any person violating this section shall be subject to an
30 administrative fine of not less than twenty-five dollars (\$25.00) nor more
31 than one thousand dollars (\$1,000).

32
33 SECTION 105. Arkansas Code § 20-23-306(a)(1), concerning the issuance
34 of a certificate of inspection to a boiler or pressure vessel owner, is
35 amended to read as follows:

36 (a)(1) Upon receipt by the Boiler Inspection Division of an annual or

1 biennial certificate report of inspection from a state inspector or from an
2 inspector employed by an insurance company that a boiler or pressure vessel
3 is in safe working condition with the required fittings, valves, and
4 appliances properly installed and set, the ~~Director of the Division of Labor~~
5 Secretary of the Department of Labor and Licensing or his or her designee
6 shall issue to the owner of the boiler or pressure vessel a certificate of
7 inspection.

8
9 SECTION 106. Arkansas Code § 20-23-311(b), concerning boiler
10 inspection fees, is amended to read as follows:

11 (b) The rates in subsection (a) of this section may be reduced by the
12 ~~Director of the Division of Labor~~ Secretary of the Department of Labor and
13 Licensing or his or her designee at the beginning of any fiscal year if the
14 rates produce a greater amount of revenue than is required to defray the cost
15 of operation of the Boiler Inspection Division.

16
17 SECTION 107. Arkansas Code § 20-23-311(d), concerning failure to pay a
18 boiler inspection fee, is amended to read as follows:

19 (d) If the owner, user, or agent of the owner shall fail to pay any
20 inspection fee under this section within thirty (30) days, a civil money
21 penalty equal to the amount of the unpaid fee shall attach to the outstanding
22 amount of the fee, and the ~~director~~ secretary or his or her designee shall be
23 empowered to collect this penalty in addition to the amount of the fee.

24
25 SECTION 108. Arkansas Code § 20-23-312(a)(1), concerning the
26 collection of boiler inspection fees, is amended to read as follows:

27 (a)(1) In addition to other remedies provided for by this chapter, if
28 after the making of any inspection or accrual of any charge or penalty
29 required or authorized by this chapter, the fee, penalty, or charge is not
30 paid within thirty (30) days after demand upon whoever is liable therefor,
31 the ~~Director of the Division of Labor~~ Secretary of the Department of Labor
32 and Licensing or his or her designee may employ an attorney, who is empowered
33 without payment of costs or giving of bond for costs to institute suit in the
34 name of the State of Arkansas in any court of competent jurisdiction to
35 collect the fees, penalties, costs, and charges.

36

1 SECTION 109. Arkansas Code § 20-23-314(b)(1), concerning pressure
2 piping inspections, is amended to read as follows:

3 (b)(1) Upon completion of the installation of any pressure piping, a
4 final inspection shall be made, and the inspector shall complete a final
5 inspection report on a form approved by the ~~Director of the Division of Labor~~
6 Secretary of the Department of Labor and Licensing or his or her designee.
7

8 SECTION 110. Arkansas Code § 20-23-407 is amended to read as follows:
9 20-23-407. Owner or user inspector programs.

10 (a) Any owner or user of a steam boiler or pressure vessel subject to
11 this chapter may perform any inspections required by this chapter on such
12 vessels owned or operated by the owner or user if the owner or user meets the
13 requirements prescribed by rule of the ~~Director of the Division of Labor~~
14 Secretary of the Department of Labor and Licensing or his or her designee.

15 (b) The ~~director~~ secretary or his or her designee shall set out
16 requirements for the certification of owner or user inspectors and
17 certification of owner or user inspection programs by rule and shall have
18 full authority to promulgate and enforce those rules.

19 (c)(1)(A) After notice and opportunity for hearing, any owner or user
20 who is found to have violated rules prescribed by the ~~director~~ secretary or
21 his or her designee pursuant to this subchapter shall be assessed a civil
22 monetary penalty of not less than one hundred dollars (\$100) or more than
23 five thousand dollars (\$5,000).

24 (B) Each day that a violation continues shall be
25 considered a separate violation.

26 (2) The ~~director~~ secretary or his or her designee may bring a
27 civil action in a court of competent jurisdiction to recover the amount of
28 any civil monetary penalties.

29 (d) In addition to civil monetary penalties, any owner or user who is
30 found to be in violation of this section shall be guilty of a Class A
31 misdemeanor.
32

33 SECTION 111. Arkansas Code § 20-27-901(2)(A), concerning definitions
34 pertaining to safety glazing materials, is amended to read as follows:

35 (2)(A) "Hazardous locations" means those areas in residential,
36 commercial, and public buildings where the use of other than safety glazing

1 materials would constitute a hazard as the ~~Director of the Division of Labor~~
2 Secretary of the Department of Labor and Licensing or his or her designee may
3 determine after notice and hearings as are now required by law.

4
5 SECTION 112. Arkansas Code § 20-27-1102 is amended to read as follows:
6 20-27-1102. Rules – Enforcement – Administration.

7 (a) The ~~Director of the Division of Labor~~ Secretary of the Department
8 of Labor and Licensing or his or her designee shall promulgate rules to
9 establish minimum standards for the qualifications of those individuals
10 performing blasting in Arkansas.

11 (b) The ~~director~~ secretary or his or her designee shall implement,
12 enforce, and administer this subchapter and the rules adopted pursuant to
13 this subchapter.

14 (c) Rules under this section shall be adopted pursuant to the Arkansas
15 Administrative Procedure Act, § 25-15-201 et seq.

16 (d)(1) The ~~director~~ secretary or his or her designee may establish by
17 rule fees for certifying individuals as qualified to perform blasting in
18 Arkansas.

19 (2) The fees shall not exceed the sum of thirty dollars (\$30.00)
20 per applicant.

21
22 SECTION 113. Arkansas Code § 20-27-1303 is amended to read as follows:
23 20-27-1303. Blasting Standards.

24 (a) Blasting shall be conducted to prevent injury to persons, damage
25 to public or private property, adverse impact on any underground mine, and
26 change in the course, channel, or availability of surface or ground water
27 outside the mine's perimeter.

28 (b)(1) In blasting operations, airblast shall not exceed the maximum
29 limits set forth in 30 C.F.R. § 816.67(b), at the location of any structure,
30 residence, public building, school, church, or commercial or institutional
31 building outside the perimeter of a mine and owned or leased by a person
32 other than the mine owner or operator.

33 (2)(A) If necessary to prevent damage, the ~~Director of the~~
34 Division of Labor Secretary of the Department of Labor and Licensing or his
35 or her designee may require lower maximum allowable airblast levels than
36 those specified in subdivision (b)(1) of this section for use in the vicinity

1 of a specific blasting operation.

2 (B) Such an action shall only be taken following
3 consultation with whatever expert or experts the ~~director~~ secretary or his or
4 her designee deems appropriate.

5 (3)(A) The ~~director~~ secretary or his or her designee may require
6 airblast measurement of any or all blasts and may specify the locations at
7 which such measurements are taken.

8 (B) The measuring system shall have an upper-end flat
9 frequency response of at least two hundred hertz (200 Hz). The measuring
10 system shall also have a low-end frequency response of two hertz (2 Hz) and
11 be within minus three decibels (-3 dB) at two hertz (2 Hz).

12 (c)(1) Flyrock from blasting operations, traveling in the air or along
13 the ground, should not be cast from the mine site.

14 (2) In the event that flyrock is cast from the mine site, the
15 owner or operator and contractor shall be liable and responsible for any
16 damages, including cleanup and removal of the flyrock.

17 (d)(1)(A) In blasting operations, ground vibration shall not exceed
18 the maximum limits established in accordance with either the maximum peak
19 particle velocity limits contained in 30 C.F.R. § 816.67(d)(2), or the
20 scaled-distance equation established at 30 C.F.R. § 816.67(d)(3), at the
21 location of any structure, residence, public building, school, church, or
22 commercial or institutional building outside the perimeter of a mine and
23 owned or leased by a person other than the mine owner or operator.

24 (B) If a seismographic record for a blast exists or is
25 required, the maximum limit for ground vibration shall be the peak particle
26 velocity limits contained in 30 C.F.R. § 816.67(d)(2), at any structure,
27 residence, public building, school, church, or commercial or institutional
28 building.

29 (2)(A) If necessary to prevent damage, the ~~director~~ secretary or
30 his or her designee may require lower maximum allowable ground vibration
31 levels than those specified in subdivision (d)(1) of this section for use in
32 the vicinity of a specific blasting operation.

33 (B) Such action shall only be taken following consultation
34 with whatever expert or experts the ~~director~~ secretary or his or her designee
35 deems appropriate.

36 (3) The ~~director~~ secretary or his or her designee may require an

1 owner or operator to conduct seismic monitoring of any blasts or may specify
2 the location at which the measurements are taken and the degree of detail
3 necessary in the measurement.

4 (e)(1) The maximum limits for airblast and ground vibration as
5 specified in subdivisions (b)(1) and (d)(1) of this section shall be
6 construed as the threshold below which blasting damage is unlikely to occur.
7 However, the ~~director~~ secretary or his or her designee shall have the
8 authority to promulgate rules requiring more or less restrictive limits, as
9 appropriate.

10 (2) Such an action shall only be taken following consultation
11 with whatever expert or experts the ~~director~~ secretary or his or her designee
12 deems appropriate.

13 (f)(1) If a pit or quarry is closer than three hundred feet (300') from
14 any public highway, road, or street, no blasting shall be conducted without
15 the prior written approval of the ~~director~~ secretary or his or her designee.

16 (2) Notwithstanding subdivision (f)(1) of this section, any
17 quarry or pit in existence on July 1, 1995, shall be allowed to continue
18 operations without obtaining the written approval of the ~~director~~ secretary
19 or his or her designee.

20 (g)(1) All blasting operations shall be conducted between sunrise and
21 sunset, unless extraordinary circumstances arise which would necessitate
22 conducting a blast outside these hours.

23 (2) Such circumstances shall be documented in the blast records
24 required by § 20-27-1305.

25 (h)(1) Before the firing of a blast, the owner or operator or
26 contractor shall follow a definite plan of warning signals that can be
27 clearly seen or heard by anyone in the blasting area.

28 (2) The owner or operator shall inform all employees at the
29 operation as to the established procedure.

30
31 SECTION 114. Arkansas Code § 20-27-1304 is amended to read as follows:
32 20-27-1304. Notice of blasting operations.

33 (a)(1) Any owner or operator and contractor conducting blasting
34 operations in this state on July 1, 1995, shall notify the ~~Director of the~~
35 ~~Department of Labor~~ Secretary of the Department of Labor and Licensing or his
36 or her designee of each site or location on which blasting operations are

1 conducted.

2 (2) Such notice shall be filed with the Department of Labor and
3 Licensing no later than October 1, 1995.

4 (b) Any owner or operator and contractor which, after July 1, 1995,
5 begins blasting at a new site or location, or at a site on which no blasting
6 has occurred for a period of six (6) consecutive months, shall notify the
7 ~~director~~ secretary or his or her designee of its operation at least twenty-
8 four (24) hours in advance of the initial blast.

9 (c) The notice required by subsections (a) and (b) of this section
10 shall be on a form approved by the ~~director~~ secretary or his or her designee
11 and shall include, but not be limited to, the following information:

12 (1) The name, address, and telephone number of the mine owner or
13 operator;

14 (2) The name, address, and telephone number of the operator or
15 contractor performing the blast;

16 (3) The location of the quarry site or open pit mine; and

17 (4) The location where the records of the blasting operations
18 are to be maintained.

19 (d) All owners and operators and contractors shall notify the ~~director~~
20 secretary or his or her designee in writing of any change of address or
21 location.

22

23 SECTION 115. Arkansas Code § 20-27-1306(b), concerning insurance under
24 the Arkansas Quarry and Open Pit Mine Blasting Control Act, is amended to
25 read as follows:

26 (b) Proof of such coverage shall be made available to the ~~Director of~~
27 ~~the Division of Labor~~ Secretary of the Department of Labor and Licensing or
28 his or her authorized representative upon request.

29

30 SECTION 116. Arkansas Code § 20-27-1307(b), concerning exemptions
31 under the Arkansas Quarry and Open Pit Mine Blasting Control Act, is amended
32 to read as follows:

33 (b) Notwithstanding subsection (a) of this section, the authority of
34 the ~~Director of the Division of Labor~~ Secretary of the Department of Labor
35 and Licensing or his or her designee shall not be restricted with respect to:

36 (1) Mines or quarries which were in existence and operation on

1 July 1, 1995, but which change owners or operators after July 1, 1995; or
2 (2) New or existing mines or quarries which were not in operation
3 on July 1, 1995.

4
5 SECTION 117. Arkansas Code § 20-27-1308 is amended to read as follows:
6 20-27-1308. ~~Director~~— Powers and duties generally.

7 (a) In addition to other powers and authority provided by law, the
8 ~~Director of the Division of Labor~~ Secretary of the Department of Labor and
9 Licensing or his or her authorized representative shall have the following
10 authority:

11 (1) To promulgate rules for the administration and enforcement
12 of this subchapter after public hearing and opportunity for public comment;

13 (2) To establish by rule standards for the performance of
14 blasting operations at mines after public hearing and opportunity for public
15 comment;

16 (3) To investigate as to any violation of this subchapter or any
17 rule or order issued under this subchapter;

18 (4) To administer oaths, take or cause to be taken the
19 depositions of witnesses, and require by subpoena the attendance and
20 testimony of witnesses and the production of all records and other evidence
21 relative to any matter under investigation or hearing;

22 (5) To enter and inspect during normal business hours any mine,
23 any place of business of a mine owner or operator, or any place of business
24 of any contractor engaged in blasting operations at any mine for the purpose
25 of ascertaining compliance with this subchapter and any rule or order issued
26 under this subchapter. This right of entry includes the right to examine,
27 inspect, and copy any appropriate records and to question any employees;

28 (6) To issue cease and desist orders, as well as orders
29 directing that affirmative measures be taken to comply with this subchapter
30 and any rule issued under this subchapter;

31 (7) To require, at his or her discretion, a mine owner or
32 operator or contractor to offer a pre-blast survey of all buildings or
33 structures up to a radius of one-half ($\frac{1}{2}$) of a mile of the perimeter of the
34 mine before the initiation of blasting or the continuation of blasting under
35 such terms and conditions as may be established by order of the ~~director~~
36 secretary or his or her designee;

1 (8) To require, at his or her discretion, a mine owner or
2 operator or contractor to develop and submit a blasting plan for approval;

3 (9) To require, at his or her discretion, a mine owner or
4 operator or contractor to monitor and measure air blasts or ground vibration,
5 or both, under such terms and conditions as may be established by order of
6 the ~~director~~ secretary or his or her designee or to conduct such monitoring
7 and measuring through his or her authorized representative;

8 (10) To issue a variance from any specific requirement of this
9 subchapter or any rule issued under this subchapter, provided that literal
10 compliance would constitute an undue hardship and that reasonable safety of
11 persons and property is secured;

12 (11) To certify to official acts;

13 (12) To assess civil penalties as provided in § 20-27-1313; and

14 (13) To enforce generally this subchapter and the rules and
15 orders issued under this subchapter.

16 (b) In determining whether to order a pre-blast survey or whether to
17 order monitoring and measurement of air blasts and ground vibration, the
18 ~~director~~ secretary or his or her designee may consider the nature of any
19 written complaints made against that owner or operator or contractor or any
20 written complaints about that specific mine location, as well as the number
21 and frequency of such complaints.

22 (c) In case of failure of any person to comply with any subpoena
23 lawfully issued under this section or upon the refusal of any witness to
24 produce evidence or to testify to any matter regarding which he or she may be
25 lawfully interrogated, it shall be the duty of any circuit court or judge
26 thereof, upon application of the Division of Labor, to compel obedience by
27 proceedings for contempt, as in the case of disobedience of the requirements
28 of a subpoena issued by the court or a refusal to testify therein.

29
30 SECTION 118. Arkansas Code § 20-27-1309(a), concerning hearings under
31 the Arkansas Quarry and Open Pit Mine Blasting Control Act, is amended to
32 read as follows:

33 (a) All hearings conducted by the ~~Director of the Division of Labor~~
34 Secretary of the Department of Labor and Licensing or his or her designee and
35 all orders, notices, and assessments shall conform to the requirements of the
36 Arkansas Administrative Procedure Act, § 25-15-201 et seq.

1
2 SECTION 119. Arkansas Code § 20-27-1309(c)(1), concerning
3 administrative orders under the Arkansas Quarry and Open Pit Mine Blasting
4 Control Act, is amended to read as follows:

5 (c)(1) Any administrative order issued by the ~~director~~ secretary or
6 his or her designee shall be final, unless within twenty (20) days after
7 service of notice thereof, the person charged with the violation or any
8 complainant entitled to such notice notifies the ~~director~~ secretary or his or
9 her designee in writing that the order is contested.

10
11 SECTION 120. Arkansas Code § 20-27-1310(a), concerning cooperation
12 with State Fire Marshal under the Arkansas Quarry and Open Pit Mine Blasting
13 Control Act, is amended to read as follows:

14 (a) The ~~Director of the Division of Labor~~ Secretary of the Department
15 of Labor and Licensing or his or her designee shall consult the State Fire
16 Marshal regarding the adoption of any rules.

17
18 SECTION 121. Arkansas Code § 20-27-1311(b), concerning orders under
19 the Arkansas Quarry and Open Pit Mine Blasting Control Act, is amended to
20 read as follows:

21 (b) All orders entered, permits granted, and pending legal proceedings
22 instituted by any person, public or private, relating to subjects embraced
23 within this subchapter shall remain unimpaired and in full force and effect
24 until superseded by actions taken by the ~~Director of the Division of Labor~~
25 Secretary of the Department of Labor and Licensing or his or her designee
26 under this subchapter.

27
28 SECTION 122. Arkansas Code § 20-27-1313 is amended to read as follows:
29 20-27-1313. Civil penalties.

30 (a)(1) Any person who violates any provision of this subchapter or who
31 violates any rule or order issued under this subchapter may be assessed an
32 administrative civil penalty by the ~~Director of the Division of Labor~~
33 Secretary of the Department of Labor and Licensing or his or her designee in
34 an amount not to exceed ten thousand dollars (\$10,000) per violation.

35 (2) Each day of a continuing violation may be deemed a separate
36 violation for purposes of penalty assessment.

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

4 (2)(A) In his or her discretion, the ~~director~~ secretary or his
 5 or her designee may accept payment of assessed civil penalties in
 6 installments.

7 (B) The assessment by the ~~director~~ secretary or his or her
 8 designee shall be final, unless, within twenty (20) days after service of
 9 notice thereof by certified mail, the person charged with the violation or
 10 any complainant entitled to such notice notifies the ~~director~~ secretary or
 11 his or her designee in writing that the proposed assessment is contested.

12 (C) If an assessment is contested, a final administrative
 13 determination shall be made pursuant to the Arkansas Administrative Procedure
 14 Act, § 25-15-201 et seq.

15 (c) When finally determined, the amount of any assessment may be
 16 recovered in a civil action brought by the ~~director~~ secretary or his or her
 17 designee in a court of competent jurisdiction without paying costs or giving
 18 bond for costs.

19 (d)(1) Sums collected as reimbursement for expenses, costs, and
 20 damages to the Division of Labor shall be deposited into the operating fund
 21 of the division.

22 (2) Sums collected as civil penalties shall be deposited into
 23 the General Revenue Fund Account of the State Apportionment Fund.

24 (e) Notice of any assessment by the ~~director~~ secretary or his or her
 25 designee shall be served on any person who has made a written complaint
 26 within the past three (3) years to the division regarding the blasting
 27 operations of the person charged with the violation.

28
 29 SECTION 123. Arkansas Code § 20-27-1314 is amended to read as follows:
 30 20-27-1314. Restraint

31 In addition to the civil penalty provided in § 20-27-1313, the ~~Director~~
 32 ~~of the Division of Labor~~ Secretary of the Department of Labor and Licensing
 33 or his or her designee may petition any court of competent jurisdiction
 34 without paying costs or giving bond for costs to:

35 (1)(A) Enjoin or restrain any violation of or compel compliance with
 36 this subchapter and any rules or orders issued under this subchapter.

1 (B) In situations in which there is an imminent threat to public
 2 or worker safety or to property, the ~~director~~ secretary or his or her
 3 designee may seek a temporary restraining order for the cessation of any
 4 blasting;

5 (2) Affirmatively order that such remedial measures be taken as may be
 6 necessary or appropriate to implement or effectuate the purposes and intent
 7 of this subchapter; and

8 (3) Recover all costs, expenses, and damages to the Division of Labor
 9 and any other agency or subdivision of the state in enforcing or effectuating
 10 this subchapter.

11
 12 SECTION 124. Arkansas Code § 20-31-105(c), concerning compliance with
 13 the Arkansas Electrical Code Authority Act, is amended to read as follows:

14 (c) In addition to the penalties in subsection (b) of this section,
 15 the ~~Director of the Department of Labor~~ Secretary of the Department of Labor
 16 and Licensing or his or her designee is authorized:

17 (1) To petition any court of competent jurisdiction to enjoin or
 18 restrain any person or electrician who does any construction, installation,
 19 and maintenance of electrical facilities or performs electrical work without
 20 an exemption or who otherwise violates this chapter; and

21 (2) To seek the suspension or revocation by the Board of
 22 Electrical Examiners of the State of Arkansas of any “electrical contractor”,
 23 a “master electrician”, a “journeyman electrician”, or an “industrial
 24 maintenance electrician” licensed under § 17-28-101 et seq. who is found to
 25 be in violation of this chapter.

26
 27 SECTION 125. Arkansas Code § 23-89-504 is amended to read as follows:
 28 23-89-504. Safety inspection and insurance required – Enforcement –
 29 Violations.

30 (a) It is unlawful for any person or entity to operate an amusement
 31 attraction or amusement ride unless the person or entity maintains liability
 32 insurance in the minimum amount required by this subchapter at all times
 33 during the operation of the amusement attraction or amusement ride in the
 34 state and unless the person has a current safety inspection report made at
 35 the time of set-up of the amusement attraction or amusement ride, but before
 36 use by the public.

1 (b)(1) ~~The Director of the Division of Labor~~ Secretary of the
2 Department of Labor and Licensing or his or her designee may conduct
3 examinations and investigations into the affairs of any person or entity
4 subject to the provisions of this subchapter for the purpose of determining
5 compliance with the provisions of this subchapter.

6 (2) ~~The Director of the Division of Labor~~ secretary or his or
7 her designee shall administer and enforce the provisions of this subchapter.

8 (3) ~~The Director of the Division of Labor~~ secretary or his or
9 her designee shall promulgate rules for the proper administration and
10 enforcement of this subchapter, including rules establishing minimum safety
11 requirements for the operation and maintenance of amusement rides and
12 amusement attractions.

13 (4) ~~The Director of the Division of Labor~~ secretary or his or
14 her designee shall employ amusement ride inspectors certified by the National
15 Association of Amusement Ride Safety Officials.

16 (c) If the ~~Director of the Division of Labor~~ secretary or his or her
17 designee finds that an operator or owner has failed to comply with the
18 provisions of this subchapter, he or she may order the operator or owner to
19 immediately cease operating the amusement attraction or amusement ride and
20 may impose upon the operator or owner an administrative penalty of not more
21 than ten thousand dollars (\$10,000).

22 (d)(1) If the ~~Director of the Division of Labor~~ secretary or his or
23 her designee finds that an operator or owner failed to comply with the
24 provisions of this subchapter, he or she shall so inform the prosecuting
25 attorney in whose district any purported violation may have occurred.

26 (2)(A) Upon conviction, the operator or owner shall be guilty of
27 a Class A misdemeanor.

28 (B) Upon conviction of a knowing violation, the operator
29 or owner shall be guilty of a Class D felony.

30 (3) Each day of violation shall constitute a separate offense.

31 (e) ~~The Director of the Division of Labor~~ secretary or his or her
32 designee shall have authority to bring a civil action in any court of
33 competent jurisdiction, without payment of costs or giving bond for costs, to
34 recover any administrative penalty imposed pursuant to this subchapter or to
35 recover any delinquent fees owed pursuant to this subchapter.

36 (f) ~~The Director of the Division of Labor~~ secretary or his or her

1 designee and his or her deputies, assistants, examiners, and employees and
2 the Director of the Division of Arkansas State Police and his or her
3 deputies, officers, assistants, and employees and any public law enforcement
4 officer shall not be liable for any damages occurring as a result of the
5 implementation of this subchapter.

6
7 SECTION 126. Arkansas Code § 23-89-505(c), concerning notice of
8 amusement ride operations required under the Amusement Ride and Amusement
9 Attraction Safety Insurance Act, is amended to read as follows:

10 (c)(1) Any person or entity intending to operate an amusement
11 attraction or amusement ride in this state shall notify the ~~Director of the~~
12 ~~Division of Labor~~ Secretary of the Department of Labor and Licensing or his
13 or her designee of such intent and shall notify the ~~director~~ secretary or his
14 or her designee of the location, dates, and times of intended operation.

15 (2) The notice must be made to the ~~director~~ secretary or his or
16 her designee four (4) days prior to intended operation, excluding Saturdays,
17 Sundays, or any legal holidays.

18
19 SECTION 127. Arkansas Code § 23-89-505(d), concerning safety
20 inspections, notice, and insurance required under the Amusement Ride and
21 Amusement Attraction Safety Insurance Act, is amended to read as follows:

22 (d) Any person or entity failing to comply with subsection (c) of this
23 section shall be subject to an administrative penalty issued by the ~~director~~
24 secretary or his or her designee of no more than five thousand dollars
25 (\$5,000) in addition to other penalties, both administrative and criminal,
26 contained in this subchapter.

27
28 SECTION 128. Arkansas Code § 23-89-506 is amended to read as follows:
29 23-89-506. Inspections and fees.

30 (a)(1) The ~~Director of the Division of Labor~~ Secretary of the
31 Department of Labor and Licensing or his or her designee is authorized to
32 inspect each person or entity to ensure compliance with this subchapter.

33 (2) Two (2) times per calendar year, the ~~director~~ secretary or
34 his or her designee shall inspect all permanently placed operational
35 amusement rides or amusement attractions located in this state being operated
36 for profit or charity.

1 (3) All portable amusement rides or amusement attractions shall
2 be inspected by the ~~director~~ secretary or his or her designee every time they
3 are moved to a new location in Arkansas and before they are permitted to
4 commence operation or open to the public.

5 (4)(A) Inflatable attractions, self-contained mobile
6 playgrounds, artificial climbing walls, and other patron-propelled amusement
7 rides or amusement attractions shall be inspected annually, unless a more
8 frequent schedule of inspections is established by rules of the ~~director~~
9 secretary or his or her designee for certain types of inflatable attractions
10 and self-contained mobile playgrounds.

11 (B) Self-contained mobile playgrounds, artificial climbing
12 walls, and other patron-propelled amusement rides or amusement attractions
13 shall be inspected pursuant to subdivision (a)(4)(A) of this section only if
14 such playgrounds contain no mechanical or electrical parts, structures, or
15 additions such as blowers or lights.

16 (C) The ~~director~~ secretary or his or her designee may
17 determine by rule which other portable amusement ride or amusement attraction
18 is sufficiently safe to justify inspection only one (1) time each six (6)
19 months.

20 (b) The ~~director~~ secretary or his or her designee is authorized to
21 make an inspection on an emergency basis when notification pursuant to this
22 subchapter is made less than four (4) days, excluding Saturdays, Sundays, and
23 legal holidays, prior to the date of the operation of the facility, if he or
24 she determines that the owner or operator could not have reasonably known of
25 the proposed operation prior to the four-day period and that the owner or
26 operator meets all other requirements for operation in this state.

27 (c) If the ~~director~~ secretary or his or her designee or an authorized
28 employee of the Division of Labor finds that any amusement ride or amusement
29 attraction is defective in a manner affecting patron safety or unsafe, he or
30 she shall attach to the amusement ride or amusement attraction a notice and
31 order prohibiting its use or operation. Operation of the amusement ride shall
32 not resume until the unsafe or hazardous condition is corrected and the
33 ~~director~~ Secretary or his or her authorized representative permits such an
34 operation.

35 (d) Any inspector certified pursuant to the requirements of this
36 subchapter who, upon inspection of an amusement ride or amusement attraction,

1 finds the amusement ride or amusement attraction to be defective or unsafe
2 shall immediately report the amusement ride or amusement attraction and its
3 condition to the division.

4 (e) The ~~director~~ secretary or his or her designee shall charge a fee
5 to be paid by the owner of any amusement ride or amusement attraction for all
6 amusement ride safety inspections performed by any employee of the division.
7 Such fees shall be as follows:

8 (1) For one (1) to five (5) amusement rides or amusement
9 attractions, one hundred dollars (\$100);

10 (2) For six (6) to fifteen (15) amusement rides or amusement
11 attractions, two hundred dollars (\$200);

12 (3) For sixteen (16) to twenty-five (25) amusement rides or
13 amusement attractions, three hundred dollars (\$300);

14 (4) For twenty-six (26) to thirty-five (35) amusement rides or
15 amusement attractions, four hundred dollars (\$400); and

16 (5) For thirty-six (36) and more amusement rides or amusement
17 attractions, six hundred dollars (\$600).

18 (f) The ~~director~~ secretary or his or her designee is authorized by
19 rule to implement an inspection fee waiver program for the benefit of a
20 county fair association, provided that:

21 (1) The county's population is under fifteen thousand (15,000)
22 based on United States Bureau of the Census estimates as of July 1, 1999; and

23 (2) The county fair association can demonstrate that it would be
24 unable to obtain a carnival for its county fair without such a waiver.

25

26 SECTION 129. Arkansas Code § 23-89-507 is amended to read as follows:

27 23-89-507. Inspection by insurance company – Change in coverage.

28 (a)(1) Except as provided in subdivision (a)(3) of this section, an
29 insurance company insuring an operator of an amusement attraction or
30 amusement ride as required in this subchapter shall inspect the amusement
31 attraction or amusement ride of the insured for safety at least one (1) time
32 each calendar year.

33 (2) The operator shall maintain a copy of a report required
34 under subdivision (a)(1) of this section at the site of operation of the
35 amusement attraction or amusement ride, together with proof of insurance
36 coverage.

1 (3) An insurance company insuring an inflatable attraction is
2 not required to perform an inspection of the inflatable attraction.

3 (b) If any insurer insuring an operator shall cancel the coverage of
4 the operator, the insurer shall notify the ~~Director of the Division of Labor~~
5 Secretary of the Department of Labor and Licensing or his or her designee of
6 the cancellation at least ten (10) days before the cancellation is effective.

7 (c) The insurer shall immediately notify the ~~director~~ secretary or his
8 or her designee if the cancellation notice is rescinded or coverage is
9 reinstated.

10 (d) If the insurer finds any amusement attraction or amusement ride to
11 be unsafe or cancels the insurance coverage and so notifies the ~~director~~
12 secretary or his or her designee, then the ~~director~~ secretary or his or her
13 designee shall immediately issue a cease and desist order preventing any
14 operation until written documentation is provided to the ~~director~~ secretary
15 or his or her designee that the amusement attraction or amusement ride has
16 been made safe or insurance coverage has been obtained.

17 (e) Any insurance company or surplus lines insurer failing to comply
18 with this section shall be subject to revocation of its certificate of
19 authority or registration by the Insurance Commissioner, or in lieu of
20 suspension or revocation, a fine assessed by the commissioner of not more
21 than fifty thousand dollars (\$50,000).

22 (f) Any employee or contractor of an insurer inspecting amusement
23 rides in Arkansas shall be registered and certified by the Division of Labor
24 pursuant to rule adopted by the ~~director~~ secretary or his or her designee.
25

26 SECTION 130. Arkansas Code § 23-89-508 is amended to read as follows:
27 23-89-508. Rules.

28 The ~~Director of the Division of Labor~~ Secretary of the Department of
29 Labor and Licensing or his or her designee is authorized to adopt appropriate
30 rules to carry out the intent and purposes of this subchapter and to assure
31 its efficient and effective enforcement.
32

33 SECTION 131. Arkansas Code § 23-89-509 is amended to read as follows:
34 23-89-509. Cease and desist orders – Notice required.

35 (a)(1) Upon issuance of cease and desist orders pursuant to § 23-89-
36 504 or § 23-89-507, the ~~Director of the Division of Labor~~ Secretary of the

1 Department of Labor and Licensing or his or her designee shall promptly
2 transmit his or her order to the Director of the Division of Arkansas State
3 Police.

4 (2) Whenever possible, the ~~Director of the Division of Labor~~
5 secretary or his or her designee shall notify any applicable fair boards or
6 sponsoring organizations in the respective districts or counties of this
7 state where the amusement attractions or amusement rides are in operation or
8 are scheduled to be in operation.

9 (3) The ~~Director of the Division of Labor~~ secretary or his or
10 her designee shall promptly notify these parties when a cease and desist
11 order has been rescinded upon proof of the operator's compliance with the
12 provisions of this subchapter.

13 (b) Upon receipt of the ~~Director of the Division of Labor's~~ secretary
14 or his or her designee's order to cease and desist operations pursuant to
15 subsection (a) of this section, the Division of Arkansas State Police shall
16 promptly serve the order on the operator and order the operator immediately
17 to cease operation of all applicable amusement attractions or amusement rides
18 in operation or scheduled to be in operation in those districts or counties
19 until the cease and desist order has been rescinded.

20
21 SECTION 132. Arkansas Code § 23-89-515(b)(2), concerning
22 nondestructive testing under the Amusement Ride and Amusement Attraction
23 Safety Insurance Act, is amended to read as follows:

24 (2) The professional engineer or other qualified individual
25 shall be approved by the ~~Director of the Division of Labor~~ Secretary of the
26 Department of Labor and Licensing or his or her designee.

27
28 SECTION 133. Arkansas Code § 23-89-516(a), concerning records under
29 the Amusement Ride and Amusement Attraction Safety Insurance Act, is amended
30 to read as follows:

31 (a) The ~~Director of the Division of Labor~~ Secretary of the Department
32 of Labor and Licensing or his or her designee shall keep records and
33 statistics by year of serious injuries and fatalities resulting from
34 amusement ride accidents. Such records and statistics shall specify the year
35 of the accident, type of injury, type of amusement ride or amusement
36 attraction involved, and cause of the accident.

1
2 SECTION 134. Arkansas Code § 23-89-516(b)(4), concerning accident
3 reports under the Amusement Ride and Amusement Attraction Safety Insurance
4 Act, is amended to read as follows:

5 (4) All accident records for a period of one (1) year on
6 premises, although such records shall be maintained and subject to being made
7 available to the ~~director~~ secretary or his or her designee for a period of
8 three (3) years;

9
10 SECTION 135. Arkansas Code § 23-89-518 is amended to read as follows:

11 23-89-518. Amusement Ride Safety Advisory Board – Creation – Duties.

12 (a)(1) There is created an Amusement Ride Safety Advisory Board.

13 (2)(A) The board shall be appointed by the Governor.

14 (B) The ~~Director of the Division of Labor~~ Secretary of the
15 Department of Labor and Licensing or his or her designee shall be ex officio
16 chair.

17 (C) The board shall consist of five (5) additional
18 members:

19 (i) One (1) member of the board shall be the
20 Secretary of the Department of Parks, Heritage, and Tourism or his or her
21 designee;

22 (ii) One (1) member of the board shall represent
23 owners or operators of amusement rides that are portable in nature;

24 (iii) One (1) member of the board shall represent
25 owners or operators of permanently placed amusement rides;

26 (iv) One (1) member of the board shall represent
27 fair managers in Arkansas; and

28 (v) One (1) member of the board shall represent the
29 general public.

30 (3)(A) Except for the ~~director and the secretary~~ Secretary of
31 the Department of Labor and Licensing and the Secretary of the Department of
32 Parks, Heritage, and Tourism, the terms of office of the members shall be for
33 four (4) years or until a successor is appointed.

34 (B) No member of the board shall be appointed to serve
35 more than two (2) consecutive full terms.

36 (C) At the time of appointment or reappointment, the

1 Governor shall adjust the length of terms to ensure that the terms of board
 2 members are staggered so that, insofar as is possible, an equal number of
 3 members shall rotate each year.

4 (b) The duties of the board shall be:

5 (1) To assist the ~~director~~ Secretary of the Department of Labor
 6 and Licensing or his or her designee with the formulation of rules regarding
 7 the safe operation of amusement rides; and

8 (2) To give the Division of Labor such counsel and advice as
 9 will aid it in the proper enforcement and administration of the provisions of
 10 this subchapter.

11 (c) Except for the ex officio chair and the ~~secretary~~ Secretary of the
 12 Department of Parks, Heritage, and Tourism, the members of the board may
 13 receive expense reimbursement and stipends in accordance with § 25-16-901 et
 14 seq.

15
 16 SECTION 136. Arkansas Code § 25-43-1105(d), concerning the employment
 17 of a Director of the Division of Labor, is repealed.

18 ~~(d) The secretary may employ a Director of the Division of Labor.~~

19
 20 SECTION 137. Title 25, Chapter 43, Subchapter 11, is amended to add an
 21 additional section to read as follows:

22 25-43-1108. Secretary of the Department of Labor and Licensing –
 23 Authority.

24 (a) Notwithstanding any other provision of law concerning a board,
 25 commission, section, or division under the Department of Labor and Licensing,
 26 the Secretary of the Department of Labor and Licensing shall have the
 27 authority to:

28 (1) Hire and fire:

29 (A) The executive director of a board, commission,
 30 section, or division of the Department of Labor and Licensing; and

31 (B) An agent, employee, or independent contractor of a
 32 board, commission, section, or division under the Department of Labor and
 33 Licensing;

34 (2) Serve or designate an individual to serve on behalf of the
 35 secretary on any board, commission, section, or division for which the
 36 secretary or any other agent or employee of the Department of Labor and

1 Licensing is designated to serve with the same rights, powers, and position;
2 and

3 (3) Structure, restructure, or otherwise organize the staff and
4 duties of each board, commission, section, or division of the Department of
5 Labor and Licensing, including without limitation:

6 (A) Organizing the function and operation of the staff of
7 a board, commission, section or division of the Department of Labor and
8 Licensing;

9 (B) Assigning a position and duties to an employee; and

10 (C)(i) Transferring a position, employee, or job
11 assignment on a permanent or temporary basis to enable the efficient
12 operation of each board, commission, section, and division of the Department
13 of Labor and Licensing.

14 (ii) The Department of Finance and Administration
15 and the Department of Shared Administrative Services shall provide any
16 assistance required to enable a position transfer under subdivision
17 (a)(3)(C)(i) of this section.

18 (b) A provision of law shall be void if the provision states or
19 implies the following:

20 (1) The authority of a board, commission, section, or division
21 under the Department of Labor and Licensing supersedes the authority of the
22 secretary to hire an executive director or any other agent, employee, or
23 independent contractor of a board, commission, section, or division of the
24 Department of Labor and Licensing;

25 (2) The role of the secretary is merely a consulting role; or

26 (3) An agent, employee, or independent contractor of the
27 Department of Labor and Licensing serves at the pleasure of a person, a
28 public official, or an entity other than the secretary.

29
30
31
32
33
34
35
36