

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
93rd General Assembly
Regular Session, 2021

A Bill

SENATE BILL 299

By: Senator J. English

For An Act To Be Entitled

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

Subtitle

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

(i) Upon presentation of a written release from the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) To public officials;

(B) To agents or contractors of public officials; and

(C) On the basis of informed consent.

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

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

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

Opportunity Act purposes, is repealed.

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

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

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

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

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

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

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

~~(2) The Revenue Division of the Department of Finance and Administration may be provided;~~

~~(A) Such information as is required and necessary by the Arkansas Enterprise Zone Act of 1993, § 15-4-1701 et seq., and the Arkansas Economic Development Act of 1995, § 15-4-1901 et seq.;~~

~~(B) The net increase in employment at manufacturing and mining establishments as defined in § 26-51-505 that are participating in the manufacturing jobs tax credit program created by § 26-51-505 if the Revenue Division provides a list of employers by name, location, and the period of time for which the data is sought; and~~

~~(C) Such information as is necessary for the effective operation of their respective programs to allow cooperation between the Revenue Division and the Division of Workforce Services;~~

~~(3) The Arkansas Institute for Economic Advancement of the University of Arkansas at Little Rock may be provided covered wage and employment data by county on a quarterly basis by the two-digit United States Office of Management and Budget standard industrial classifications or the equivalent classification codes under the North American Industry Classification System;~~

~~(4) Arkansas Rehabilitation Services may be provided employer quarterly wage reports and employer names, addresses, and phone numbers;~~

~~(5) The Arkansas Department of Transportation may be provided;~~

~~(A) The employer's name, the business location in Arkansas, the current number of employees, and the code for each employer classified by the agency in the Standard Industrial Classification Code or the equivalent classification code under the North American Industry Classification System; and~~

~~(B) Other information that is necessary for the effective operation of their respective programs in order to allow cooperation between the Arkansas Department of Transportation and the Division of Workforce Services; and~~

~~(6) The Division of Environmental Quality may be provided the employer's name, mailing address, business location in Arkansas, the current number of employees, and the code for each employer classified by the agency in the Standard Industrial Classification Code or an equivalent classification code under the North American Industry Classification System.~~

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

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

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

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

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

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

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

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

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

- ~~(A) Employer name;~~
- ~~(B) Federal employer identification number;~~
- ~~(C) Employer address and plant locations in Arkansas;~~
- ~~(D) Employer telephone number;~~
- ~~(E) Employer standard industrial classification code;~~
- ~~(F) Maximum number of employees by calendar year;~~
- ~~(G) Unemployment insurance account number; and~~
- ~~(H) Reporting unit number.~~

~~(2)(A) The Workers' Health and Safety Division shall be strictly prohibited from making any disclosure or redisclosure of the confidential information which may be made available to it under this subsection.~~

~~(B) Additionally, the Workers' Health and Safety Division shall reimburse the Division of Workforce Services for any and all costs incurred by the Division of Workforce Services in making the information available.~~

SECTION 6. Arkansas Code § 11-10-314(o)(1), concerning the responsibilities of the Director of the Division of Workforce Services under federal law, is amended to remove an obsolete reference to read as follows:

(o)(1) ~~Effective July 1, 1997, the~~ The director may provide information or take other actions necessitated by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193.

SECTION 7. Arkansas Code § 11-10-314(r)(1) and (2), concerning the release of information by the Division of Workforce Services to law enforcement agencies, are amended to read as follows:

(r)(1)(A) ~~The director, pursuant to a valid subpoena issued by a state prosecuting attorney, the Attorney General, a United States Attorney, a United States Magistrate Judge, or the Federal Bureau of Investigation, may release information in the possession of the Division of Workforce Services to law enforcement officials who seek unemployment information for the investigation or prosecution of a crime or to enforce an order of a court in a criminal matter~~ or a recipient of confidential information, when served with a subpoena or other compulsory process for production of confidential information or testimony upon a matter concerning the confidential information, shall file and diligently pursue a motion to quash the subpoena

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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