

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

State of Arkansas      *As Engrossed: S3/17/25 S3/20/25 S4/1/25*  
95th General Assembly      **A Bill**  
Regular Session, 2025

SENATE BILL 439

By: Senator Irvin

By: Representative L. Johnson

### **For An Act To Be Entitled**

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

### **Subtitle**

*TO AMEND THE DUTIES OF THE SECRETARY OF  
THE DEPARTMENT OF LABOR AND LICENSING;  
AND TO AMEND PORTIONS OF ARKANSAS CODE  
WHICH RESULTED FROM INITIATED ACT 1 OF  
1914.*

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8-7-1011. Rulemaking.

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

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

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

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

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

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

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

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

8-7-1013. Complaints and investigations.

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

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

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

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

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

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

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

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

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

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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11-2-112. Promulgation of rules.

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

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

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

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

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

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

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

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

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

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

11-2-114. Judicial review of rules.

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

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

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

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

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

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

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

11-2-115. Employer records – Inspection.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Necessitating irregular hours of work;

(2) At a piece rate;

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

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

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

(6) Under a collective bargaining agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11-4-219. Judicial review.

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

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

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

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

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

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

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

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

be subject to review by the Supreme Court.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11-4-304. Judicial review.

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

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

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

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

11-4-306. Fees prohibited.

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

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

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

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

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

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

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

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

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

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

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

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

for the employees' health and welfare.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Falsifies records related to child labor.

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

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

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

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

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

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

this subchapter.

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

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

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

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

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

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

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

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

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

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

(a)(1) The ~~Director of the Division of Labor~~ Secretary of the Department of Labor and Licensing or his or her designee shall grant

certificates after examination by the Division of Labor or a determination by the division that the testing requirements have been satisfied in another jurisdiction.

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

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

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

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

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

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

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

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

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

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

SECTION 71. Arkansas Code § 11-7-410(a), concerning coal miners

pertaining to the regulation of mines, is amended to read as follows:

(a) It shall be unlawful for any person to work as a coal miner in any coal mine in this state without first having a certificate of qualification and competency to do so from the ~~Director of the Division of Labor~~ Secretary of the Department of Labor and Licensing or his or her designee, nor shall any person, firm, or corporation employ as a coal miner in his or her coal mine in the State of Arkansas any person who does not hold a certificate, nor shall any mine foreman, overseer, or superintendent permit or suffer any person to be employed under him or her, or in any coal mine under his or her charge or supervision, as a coal miner in this state, except as provided in this act, who does not hold a certificate of qualification.

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

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

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

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

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

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

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

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

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

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

working with a coal miner; and

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

(2) In no case shall the applicant be deemed competent or qualified under this act unless he or she appears in person before the ~~director~~ secretary or his or her designee and orally answers correctly at least twelve (12) practical questions propounded to him or her by the ~~director~~ secretary or his or her designee pertaining to requirements and qualifications of a practical coal miner.

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

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

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

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

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

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

(a) A person making application for a coal miner's certificate of competency and qualification shall be granted a temporary permit to work until such time as an examination is held by the ~~Director of the Division of Labor~~ Secretary of the Department of Labor and Licensing or his or her

designee and if, in the judgment of the ~~director~~ secretary or his or her designee, he or she is so qualified.

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

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

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

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

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

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

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

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

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

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

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

(4) Whatever other information the ~~director~~ secretary or his or

her designee may require.

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

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

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

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

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

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

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

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

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

(a) It shall be the duty of the Division of Labor, and it shall have

the power, jurisdiction, and authority to administer and enforce the provisions of this subchapter.

(b) The ~~Director of the Division of Labor~~ Secretary of the Department of Labor and Licensing or his or her duly authorized agent shall have the power, jurisdiction, and authority to issue licenses to employment agencies, agency managers, and counselors and to refuse to issue, revoke, or suspend the licenses when, after due investigation, and in compliance with the procedures set forth in §§ 11-11-221 and 11-11-222, the ~~director~~ secretary or his or her duly authorized agent finds that the applicant is for good and sufficient cause unfit to be an employment agent, agency manager, or counselor within the meaning of this subchapter or any rules or orders lawfully promulgated under this subchapter.

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

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

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

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

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

authorized agent.

(6) If any person in proceedings before the ~~director~~ secretary or his or her duly authorized agent or in investigations conducted by the ~~director~~ secretary or his or her duly authorized agent disobeys or resists any lawful order or process issued by the ~~director~~ secretary or his or her authorized agents, or fails to produce, after being lawfully directed to do so, any book, paper, record, or document, or refuses to appear and testify after being subpoenaed to do so, the ~~director~~ secretary or his or her duly authorized agent shall certify the facts to any court of competent jurisdiction in the state or to the Pulaski County Circuit Court.

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

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

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

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

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

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

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

SECTION 79. Arkansas Code § 11-11-208(b)(2), concerning the license

required for a private employment agency, is amended to read as follows:

(2) In addition to the penalties described in subdivision (b)(1) of this section, upon petition of the ~~Director of the Division of Labor~~ Secretary of the Department of Labor and Licensing or his or her designee, any court in the state having the statutory power to enjoin or restrain shall have jurisdiction to restrain and enjoin any person who engages in the business of or acts as an employment agent, agency manager, or counselor without having first procured a license for so engaging or acting.

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

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

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

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

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

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

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

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

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

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

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

- (1) A citizen of the United States;
- (2) ~~Of good moral character;~~
- ~~(3)~~ At least twenty-one (21) years of age;
- ~~(4)~~(3) A person whose license has not been revoked within two (2) years from the date of the application;
- ~~(5)~~(4) A person who has completed the twelfth grade, except that the ~~Director of the Division of Labor~~ Secretary of the Department of Labor and Licensing or his or her designee may establish proof necessary to him or her that the applicant is possessed of a twelfth-grade education in terms of intellectual competency, judgment, and achievement; and
- ~~(6)~~(5) A person who demonstrates business integrity, financial responsibility, and judgment.

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

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

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

## SECTION 83. Arkansas Code § 11-11-212 is amended to read as follows:

## 11-11-212. Employment agency license – Application – Qualifications.

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

- (1) A citizen of the United States;
- (2) ~~Of good moral character;~~
- ~~(3)~~ At least twenty-one (21) years of age;
- ~~(4)~~(3) A person whose license has not been revoked within two (2) years from the date of the application;
- ~~(5)~~(4) A person who has completed the twelfth grade, except that the ~~Director of the Division of Labor~~ Secretary of the Department of Labor and Licensing or his or her designee may establish proof necessary to him or

her that the applicant is possessed of a twelfth-grade education in terms of intellectual competency, judgment, and achievement; and

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

(b)(1) Every applicant for an initial employment agency license and every applicant for a renewal license shall file with the ~~Director of the Division of Labor~~ secretary or his or her designee a completed application on a form prescribed and furnished by the ~~Director of the Division of Labor~~ secretary or his or her designee.

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

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

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

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

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

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

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

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

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

(3) The bond shall be conditioned that the employment agency and

each member, employee, shareholder, director, or officer of a person, firm, partnership, corporation, or association operating as the employment agency will not violate the provisions of this subchapter or violate rules or orders lawfully promulgated by the ~~director~~ secretary or his or her designee or violate the terms of any contract made by the employment agent in the conduct of its business.

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

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

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

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

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

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

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

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

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

(a) Upon filing of an application for a license as provided in this subchapter, the ~~Director of the Division of Labor~~ Secretary of the Department of Labor and Licensing or his or her designee shall cause an investigation to

be made regarding the ~~character~~, business integrity, and financial responsibility of the license applicant.

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

(c) An application for an employment agency's, agency manager's, or employment counselor's license shall be rejected by the ~~director~~ secretary or his or her designee if it is found that any person named in the license application ~~is not of good moral character~~, fails to possess business integrity, or financial responsibility or if there is good and sufficient reason within the meaning and purpose of this subchapter for rejecting the application.

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

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

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

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

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

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

(a)(1) The ~~Director of the Division of Labor~~ Secretary of the Department of Labor and Licensing or his or her designee shall have authority to issue a temporary license for operation of a private employment agency, which shall be valid for no more than ninety (90) days, upon submission by the applicant for the license of:

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

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

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

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

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

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

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

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

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

(4) The ~~director~~ secretary or his or her designee shall approve or reject an application for a temporary agency manager's license or temporary employment counselor's license within five (5) days after receipt

of a properly completed application for the license.

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

(b) Applications for renewal of all licenses provided by this subchapter must be filed with the ~~Director of the Division of Labor~~ Secretary of the Department of Labor and Licensing or his or her designee no later than thirty (30) days prior to expiration of the license.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) At the time that written charges are furnished to an

employment agency, the ~~director~~ secretary or his or her designee shall make available to the agency a signed written statement by any individual having filed a complaint with the ~~director~~ secretary or his or her designee relative to the matter for which charges have been filed by the ~~director~~ secretary or his or her designee.

(3) The agency shall be given at least twenty (20) days' written notice of the date and time of the hearing. The notice shall conform to the standards for notices set forth in the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

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

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

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

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

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

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

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

SECTION 93. Arkansas Code § 11-11-223 is amended to read as follows:  
11-11-223. Judicial review of ~~director's~~ administrative orders.

(a) If the ~~Director of the Division of Labor~~ Secretary of the Department of Labor and Licensing or his or her designee refuses to grant a license, suspends or revokes a license that has been granted, or imposes an administrative fine as provided in §§ 11-11-213, 11-11-221, and 11-11-222,

the person adversely affected or aggrieved by the order of the ~~director~~ secretary or his or her designee issued pursuant to the provisions of §§ 11-11-221 and 11-11-222 may obtain a review of the order.

(b) The order may be brought in the circuit court in the judicial district in which the violation is alleged to have occurred, where the employment agent, manager, or counselor worked, or in the Pulaski County Circuit Court or, if the aggrieved person is a nonresident of the state, in the Pulaski County Circuit Court.

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

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

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

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

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

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

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

(g)(1) If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to adduce the evidence in the hearing before the ~~director~~

secretary or his or her designee, the court may order the additional evidence to be taken before the ~~director~~ secretary or his or her designee and made a part of the record.

(2)(A) The ~~director~~ secretary or his or her designee may modify his or her findings as to the facts or make new findings, by reason of additional evidence so taken and filed, and the ~~director~~ secretary or his or her designee shall file the modified or new findings with the court.

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

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

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

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

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

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

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

follows:

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

(1) In a role or in an environment deemed to be hazardous or detrimental to the health, morals, education, or welfare of the child as determined by the ~~Director of the Division of Labor~~ Secretary of the Department of Labor and Licensing or his or her designee;

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

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

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

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

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

SECTION 96. Arkansas Code § 11-12-105 is amended to read as follows:

11-12-105. Implementation and enforcement.

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

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

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

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

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

SECTION 97. Arkansas Code § 11-14-112 is amended to read as follows:

11-14-112. Rating plans based on drug-free workplace program participation.

The Insurance Commissioner shall approve rating plans for workers'

compensation insurance that give specific identifiable consideration in the setting of rates to employers that implement a drug-free workplace program pursuant to rules adopted by the Workers' Health and Safety Division. The plans ~~must take effect January 1, 2000,~~ must be actuarially sound, and must state the savings anticipated to result from the drug testing. The credit shall be at least five percent (5%) unless the Insurance Commissioner determines that five percent (5%) is actuarially unsound. The Insurance Commissioner is also authorized to develop a schedule of premium credits for workers' compensation insurance for employers who have safety programs that attain certain criteria for safety programs. The Insurance Commissioner shall consult with the ~~Director of the Division of Labor~~ Secretary of the Department of Labor and Licensing or his or her designee in setting such criteria.

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

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

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

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

(b) The ~~director~~ secretary or his or her designee may collect an administrative penalty imposed pursuant to this chapter in a civil action in

a court of competent jurisdiction, and he or she shall not be required to pay costs or to enter a bond for payment of costs.

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

(a)(1) All boilers subject to the provisions of this chapter shall be continuously monitored by mechanical and electronic devices approved by the ~~Director of the Division of Labor~~ Secretary of the Department of Labor and Licensing or his or her designee.

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

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

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

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

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

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

(2) The chief inspector shall have at the time of employment not less than ten (10) years' experience in the construction, maintenance,

installation, and repair or inspection of high pressure boilers and unfired pressure vessels.

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

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

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

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

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

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

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

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

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

(2) He or she shall keep in his or her office a complete and accurate record of the names of all owners or operators of boilers inspected by the Boiler Inspection Division, together with the location, make, type,

dimensions, age, condition, pressure allowed upon, and date of the last inspection of all boilers and shall make an annual report thereon to the ~~director~~ secretary or his or her designee.

SECTION 104. Arkansas Code § 20-23-301 is amended to read as follows:

20-23-301. Certificate of inspection required – Application of rules and standards – Penalties.

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

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

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

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

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

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

(b) Any person violating this section shall be subject to an administrative fine of not less than twenty-five dollars (\$25.00) nor more

than one thousand dollars (\$1,000).

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

(a)(1) Upon receipt by the Boiler Inspection Division of an annual or biennial certificate report of inspection from a state inspector or from an inspector employed by an insurance company that a boiler or pressure vessel is in safe working condition with the required fittings, valves, and appliances properly installed and set, the ~~Director of the Division of Labor~~ Secretary of the Department of Labor and Licensing or his or her designee shall issue to the owner of the boiler or pressure vessel a certificate of inspection.

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

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

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

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

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

(a)(1) In addition to other remedies provided for by this chapter, if after the making of any inspection or accrual of any charge or penalty required or authorized by this chapter, the fee, penalty, or charge is not paid within thirty (30) days after demand upon whoever is liable therefor,

the ~~Director of the Division of Labor~~ Secretary of the Department of Labor and Licensing or his or her designee may employ an attorney, who is empowered without payment of costs or giving of bond for costs to institute suit in the name of the State of Arkansas in any court of competent jurisdiction to collect the fees, penalties, costs, and charges.

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

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

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

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

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

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

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

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

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

misdemeanor.

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

(2)(A) "Hazardous locations" means those areas in residential, commercial, and public buildings where the use of other than safety glazing materials would constitute a hazard as the ~~Director of the Division of Labor~~ Secretary of the Department of Labor and Licensing or his or her designee may determine after notice and hearings as are now required by law.

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

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

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

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

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

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

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

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

(b)(1) In blasting operations, airblast shall not exceed the maximum limits set forth in 30 C.F.R. § 816.67(b), at the location of any structure, residence, public building, school, church, or commercial or institutional

building outside the perimeter of a mine and owned or leased by a person other than the mine owner or operator.

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

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

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

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

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

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

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

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

(2)(A) If necessary to prevent damage, the ~~director~~ secretary or his or her designee may require lower maximum allowable ground vibration

levels than those specified in subdivision (d)(1) of this section for use in the vicinity of a specific blasting operation.

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

(3) The ~~director~~ secretary or his or her designee may require an owner or operator to conduct seismic monitoring of any blasts or may specify the location at which the measurements are taken and the degree of detail necessary in the measurement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 116. Arkansas Code § 20-27-1307(b), concerning exemptions

under the Arkansas Quarry and Open Pit Mine Blasting Control Act, is amended to read as follows:

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

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

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

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

- (1) To promulgate rules for the administration and enforcement of this subchapter after public hearing and opportunity for public comment;
- (2) To establish by rule standards for the performance of blasting operations at mines after public hearing and opportunity for public comment;
- (3) To investigate as to any violation of this subchapter or any rule or order issued under this subchapter;
- (4) To administer oaths, take or cause to be taken the depositions of witnesses, and require by subpoena the attendance and testimony of witnesses and the production of all records and other evidence relative to any matter under investigation or hearing;
- (5) To enter and inspect during normal business hours any mine, any place of business of a mine owner or operator, or any place of business of any contractor engaged in blasting operations at any mine for the purpose of ascertaining compliance with this subchapter and any rule or order issued under this subchapter. This right of entry includes the right to examine, inspect, and copy any appropriate records and to question any employees;
- (6) To issue cease and desist orders, as well as orders directing that affirmative measures be taken to comply with this subchapter and any rule issued under this subchapter;

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

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

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

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

(11) To certify to official acts;

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

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

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

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

SECTION 118. Arkansas Code § 20-27-1309(a), concerning hearings under

the Arkansas Quarry and Open Pit Mine Blasting Control Act, is amended to read as follows:

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

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

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

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

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

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

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

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

(a)(1) Any person who violates any provision of this subchapter or who

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 125. Arkansas Code § 23-89-504 is amended to read as follows:

23-89-504. Safety inspection and insurance required – Enforcement – Violations.

(a) It is unlawful for any person or entity to operate an amusement

attraction or amusement ride unless the person or entity maintains liability insurance in the minimum amount required by this subchapter at all times during the operation of the amusement attraction or amusement ride in the state and unless the person has a current safety inspection report made at the time of set-up of the amusement attraction or amusement ride, but before use by the public.

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

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

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

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

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

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

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

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

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

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

(f) The ~~Director of the Division of Labor~~ secretary or his or her designee and his or her deputies, assistants, examiners, and employees and the Director of the Division of Arkansas State Police and his or her deputies, officers, assistants, and employees and any public law enforcement officer shall not be liable for any damages occurring as a result of the implementation of this subchapter.

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

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

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

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

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

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

(a)(1) The ~~Director of the Division of Labor~~ Secretary of the

Department of Labor and Licensing or his or her designee is authorized to inspect each person or entity to ensure compliance with this subchapter.

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

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

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

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

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

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

(c) If the ~~director~~ secretary or his or her designee or an authorized employee of the Division of Labor finds that any amusement ride or amusement attraction is defective in a manner affecting patron safety or unsafe, he or she shall attach to the amusement ride or amusement attraction a notice and

order prohibiting its use or operation. Operation of the amusement ride shall not resume until the unsafe or hazardous condition is corrected and the ~~director~~ Secretary or his or her authorized representative permits such an operation.

(d) Any inspector certified pursuant to the requirements of this subchapter who, upon inspection of an amusement ride or amusement attraction, finds the amusement ride or amusement attraction to be defective or unsafe shall immediately report the amusement ride or amusement attraction and its condition to the division.

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

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

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

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

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

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

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

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

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

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

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

(a)(1) Except as provided in subdivision (a)(3) of this section, an insurance company insuring an operator of an amusement attraction or amusement ride as required in this subchapter shall inspect the amusement

attraction or amusement ride of the insured for safety at least one (1) time each calendar year.

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

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

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

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

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

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

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

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

The ~~Director of the Division of Labor~~ Secretary of the Department of Labor and Licensing or his or her designee is authorized to adopt appropriate rules to carry out the intent and purposes of this subchapter and to assure

its efficient and effective enforcement.

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

(a)(1) Upon issuance of cease and desist orders pursuant to § 23-89-504 or § 23-89-507, the ~~Director of the Division of Labor~~ Secretary of the Department of Labor and Licensing or his or her designee shall promptly transmit his or her order to the Director of the Division of Arkansas State Police.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3)(A) Except for the ~~director and the secretary~~ Secretary of

the Department of Labor and Licensing and the Secretary of the Department of Parks, Heritage, and Tourism, the terms of office of the members shall be for four (4) years or until a successor is appointed.

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

(C) At the time of appointment or reappointment, the Governor shall adjust the length of terms to ensure that the terms of board members are staggered so that, insofar as is possible, an equal number of members shall rotate each year.

(b) The duties of the board shall be:

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

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

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

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

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

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

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

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

(1) Hire and fire:

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

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

(2) Serve or designate an individual to serve on behalf of the secretary on any board, commission, section, or division for which the secretary or any other agent or employee of the Department of Labor and Licensing is designated to serve with the same rights, powers, and position; and

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

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

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

(C)(i) Transferring a position, employee, or job assignment on a permanent or temporary basis to enable the efficient operation of each board, commission, section, and division of the Department of Labor and Licensing upon the approval of the Legislative Council or, if the General Assembly is in regular session, fiscal session, or extraordinary session, the Joint Budget Committee.

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

(iii)(a) Determining the maximum number of employees and the maximum amount of appropriation of general revenue funding for a state agency each fiscal year is the prerogative of the General Assembly and is usually accomplished by delineating the maximums in the appropriation act for a state agency and the general revenue allocations authorized for each fund and fund account by amendment to the Revenue Stabilization Law.

(b) In light of subdivision (a)(3)(C)(i) of this section, it is both necessary and appropriate that the General Assembly maintain oversight by requiring prior approval of the Legislative Council or Joint Budget Committee or their cochairs as provided by this subdivision (a)(3)(C).

(c) The requirement of approval by the Legislative Council or Joint Budget Committee or their cochairs is not a severable part of this subdivision (a)(3)(C). If the requirement of approval by the Legislative Council or Joint Budget Committee is ruled unconstitutional by a court of competent jurisdiction, this subdivision (a)(3)(C) is void.

(b) A provision of law existing on the effective date of this act shall be superseded by this section to the extent the provision states or implies the following:

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

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

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

/s/Irvin