

1 State of Arkansas
2 85th General Assembly
3 First Extraordinary Session, 2006
4

Call Item 30

A Bill

HOUSE BILL 1033

5 By: Representatives Petrus, Adcock, J. Hutchinson, Abernathy, Blair, Blount, Bond, Borhauer, Boyd,
6 Bradford, Burris, Chesterfield, Childers, Clemons, Cook, Cooper, Cowling, D. Creekmore, Dangeau,
7 Davis, Dunn, Edwards, Elliott, D. Evans, L. Evans, Everett, Fite, Flowers, George, Goss, Hardwick,
8 Hardy, Harrelson, T. Hutchinson, D. Johnson, J. Johnson, Kenney, Kidd, Ledbetter, W. Lewellen,
9 Mahony, Maloch, J. Martin, Mathis, McDaniel, Norton, Overbey, Pace, Pate, Pickett, S. Prater, Rainey,
10 Reep, Rogers, Saunders, Scroggin, L. Smith, Stovall, Sullivan, Sumpter, Thompson, Thyer, Walters,
11 Wells, Wills, Wood, Wyatt

12 By: Senators Critcher, Wooldridge, Argue, Baker, Bisbee, Broadway, Brown, Bryles, Capps, Faris,
13 Glover, Hendren, Higginbotham, Hill, Horn, G. Jeffress, J. Jeffress, B. Johnson, Lavery, Luker,
14 Madison, Malone, Miller, Salmon, T. Smith, Steele, Trusty, Whitaker, Wilkins, Wilkinson, Womack
15
16

For An Act To Be Entitled

18 AN ACT REVISING THE MINIMUM WAGE ACT OF THE STATE
19 OF ARKANSAS; TO INCREASE THE MINIMUM WAGE; TO
20 REVISE PROVISIONS CONCERNING DEFINITIONS,
21 VIOLATIONS, REMEDIES, AND PROCEDURES; AND FOR
22 OTHER PURPOSES.
23

Subtitle

25 AN ACT REVISING THE MINIMUM WAGE ACT OF
26 THE STATE OF ARKANSAS.
27
28

29 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
30

31 SECTION 1. Arkansas Code § 11-4-203 is amended to read as follows:
32 11-4-203. Definitions.

33 As used in this subchapter, unless the context otherwise requires:

- 34 (1) "Director" means the Director of the Department of Labor;
35 (2) "Employ" includes to suffer or to permit to work;
36 (3) "Employee" includes any individual employed by an employer



1 but shall not include:

2 (A) Any individual employed in a bona fide executive,
3 administrative, or professional capacity or as an outside commission-paid
4 salesperson who customarily performs his or her services away from his or her
5 employer's premises taking orders for goods or services;

6 (B) Students performing services for any school, college,
7 or university in which they are enrolled and are regularly attending classes;

8 (C) Any individual employed by the United States ~~or by the~~
9 ~~state or any political subdivision thereof, except public schools and school~~
10 ~~districts;~~

11 (D) Any individual engaged in the activities of any
12 educational, charitable, religious, or nonprofit organization where the
13 employer-employee relationship does not in fact exist or where the services
14 are rendered to the organizations gratuitously;

15 (E) Any bona fide independent contractor;

16 (F) Any individual employed by an agricultural employer
17 who did not use more than five hundred (500) man-days of agricultural labor
18 in any calendar quarter of the preceding calendar year;

19 (G) The parent, spouse, child, or other member of an
20 agricultural employer's immediate family;

21 (H) An individual who:

22 (i) Is employed as a hand-harvest laborer and is
23 paid on a piece-rate basis in an operation which has been, and is customarily
24 and generally recognized as having been, paid on a piece-rate basis in the
25 region of employment;

26 (ii) Commutes daily from his or her permanent
27 residence to the farm on which he or she is so employed; and

28 (iii) Has been employed in agriculture fewer than
29 thirteen (13) weeks during the preceding calendar year;

30 (I) A migrant who:

31 (i) Is sixteen (16) years of age or under and is
32 employed as a hand-harvest laborer;

33 (ii) Is paid on a piece-rate basis in an operation
34 which has been, and is customarily and generally recognized as having been,
35 paid on a piece-rate basis in the region of employment;

36 (iii) Is employed on the same farm as his or her

1 parents; and

2 (iv) Is paid the same piece-rate as employees over
3 age sixteen (16) years are paid on the same farm;

4 (J) Any employee principally engaged in the range
5 production of livestock;

6 (K) Any employee employed in planting or tending trees,
7 cruising, surveying, or felling timber or in preparing or transporting logs
8 or other forestry products to the mill, processing plants, or railroad or
9 other transportation terminal if the number of employees employed by his or
10 her employer in the forestry or lumbering operations does not exceed eight
11 (8);

12 (L) An employee employed by a nonprofit recreational or
13 educational camp that does not operate for more than seven (7) months in any
14 calendar year; or

15 (M) A nonprofit child welfare agency employee who serves
16 as a houseparent who is:

17 (i) Directly involved in caring for children who
18 reside in residential facilities of the nonprofit child welfare agency and
19 who are orphans, in foster care, abused, neglected, abandoned, homeless, in
20 need of supervision, or otherwise in crisis situations that lead to out-of-
21 home placements; and

22 (ii) Compensated at an annual rate of not less than
23 thirteen thousand dollars (\$13,000) or at an annual rate of not less than ten
24 thousand dollars (\$10,000) if the employee resides in the residential
25 facility and receives board and lodging at no cost;

26 (4)(A) "Employer" includes any individual, partnership,
27 association, corporation, business trust, the State, any political
28 subdivision of the State, or any person or group of persons acting directly
29 or indirectly in the interest of an employer in relation to an employee.

30 (B)~~(i)~~ "Employer" shall not include any individual,
31 partnership, association, corporation, business trust, or any person or group
32 of persons acting directly or indirectly in the interest of an employer in
33 relation to an employee for any workweek in which fewer than four (4)
34 employees are employed;

35 ~~(ii) Nor shall "employer" or any provisions of this~~
36 ~~subchapter be deemed to include or apply to any person, firm, corporation, or~~

1 ~~other entity subject to the minimum wage and overtime provisions of the~~
2 ~~federal Fair Labor Standards Act of 1938;~~

3 (5) "Gratuities" means voluntary monetary contributions received
4 by an employee from a guest, patron, or customer for services rendered;

5 (6) "Independent contractor" means any individual who contracts
6 to perform certain work away from the premises of his or her employer, uses
7 his or her own methods to accomplish the work, and is subject to the control
8 of the employer only as to the result of his or her work;

9 (7) "Man-day" means any day during any portion of which an
10 employee performs any agricultural labor. Any individual otherwise excluded
11 as an employee under subdivision (3)(I) of this section shall be considered
12 an employee in computing man-days of agricultural labor;

13 (8) "Occupation" means any occupation, service, trade, business,
14 industry, or branch or group of industries or employment or class of
15 employment in which employees are gainfully employed; and

16 (9) "Wage" means compensation due to an employee by reason of
17 his or her employment, payable in legal tender of the United States or checks
18 on banks convertible into cash on demand at full face value, subject to such
19 deductions, charges, or allowances as may be permitted by this subchapter or
20 by regulations of the director under this subchapter.

21
22 SECTION 2. Arkansas Code § 11-4-204 is amended to read as follows:

23 11-4-204. Law most favorable to employees applicable - Liberal
24 construction.

25 (a) Any standards relating to minimum wages, maximum hours, or other
26 working conditions in effect under any other law of this state on May 22,
27 1968, which are more favorable to employees than those applicable to
28 employees under this subchapter or the regulations issued hereunder shall not
29 be deemed to be amended, rescinded, or otherwise affected by this subchapter
30 but shall continue in full force and effect and may be enforced as provided
31 by law unless and until they are specifically superseded by standards more
32 favorable to employees by operation of or in accordance with regulations
33 issued under this subchapter.

34 (b) This subchapter shall be liberally construed in favor of its
35 purposes and shall not limit any law or policy that requires payment of
36 higher or supplemental wages or benefits.

1
 2 SECTION 3. Effective October 1, 2006, Arkansas Code § 11-4-210 is
 3 amended to read as follows:

4 11-4-210. Minimum wage.

5 ~~(a)(1) Beginning July 1, 1997, every employer shall pay each of his or~~
 6 ~~her employees wages at the rate of not less than four dollars and seventy-~~
 7 ~~five cents (\$4.75) per hour except as otherwise provided in this chapter.~~

8 ~~(2) Beginning October 1, 1997, every employer shall pay each of~~
 9 ~~his or her employees wages at the rate of not less than five dollars and~~
 10 ~~fifteen cents (\$5.15) per hour except as otherwise provided in this chapter.~~

11 (a) Beginning October 1, 2006, every employer shall pay each of his or
 12 her employees wages at the rate of not less than six dollars and twenty-five
 13 cents (\$6.25) per hour except as otherwise provided in this subchapter.

14 (b) With respect to any full-time student attending any accredited
 15 institution of education within the State of Arkansas and who is employed to
 16 work an amount not to exceed twenty (20) hours during weeks that school is in
 17 session or forty (40) hours during weeks when school is not in session, the
 18 rate of wage shall be equal to but not less than eighty-five percent (85%) of
 19 the minimum wage provided for in this section.

20
 21 SECTION 4. Arkansas Code § 11-4-211 is amended to read as follows:

22 11-4-211. Overtime.

23 (a) Except as otherwise provided in this section and §§ 11-4-210 and
 24 11-4-212, no employer shall employ any of his or her employees for a work
 25 week longer than forty (40) hours unless the employee receives compensation
 26 for his or her employment in excess of the hours above specified at a rate
 27 not less than one and one-half (1 1/2) times the regular rate of pay at which
 28 he or she is employed.

29 (b) However, employees of hotels, restaurants, and tourist attractions
 30 which have an annual sales volume of less than five hundred thousand dollars
 31 (\$500,000) and which are subject to the provisions of this subchapter shall
 32 be compensated at one and one-half (1 1/2) times the regular hourly rate of
 33 pay for all hours worked in excess of:

34 (1) Forty-four (44) hours in a work week, beginning July 1,
 35 1991; and

36 (2) Forty (40) hours in a work week beginning July 1, 1992.

1 (c) The provisions regarding the payment of wages at one and one-half
 2 (1 1/2) times the regular rate of pay for overtime services shall not be
 3 applicable with respect to agricultural employees.

4 (d) Neither the provisions of this section nor the provisions of any
 5 other law of this state shall be construed to require the payment of
 6 compensation at a greater rate than the normal rate for services performed by
 7 agricultural employees in excess of forty (40) hours per week.

8 (e) This section shall not apply to any employee exempt from the
 9 overtime requirements of the federal Fair Labor Standards Act pursuant to the
 10 provisions of 29 U.S.C. § 213(b)(1) – (24) and (b)(28) – (30), as they exist
 11 on March 1, 2006.

12 (f) No public agency shall be deemed to have violated this section
 13 with respect to the employment of any employee in fire protection activities
 14 or law enforcement activities including security personnel in correctional
 15 institutions, provided that the public agency pays overtime pay in compliance
 16 with 29 U.S.C. § 207(k), as it exists on March 1, 2006.

17 (g) In lieu of overtime compensation, the State and any political
 18 subdivision of the State may award compensatory time off at a rate of not
 19 less than one and one-half (1 1/2) hours for each hour of employment for
 20 which overtime compensation is required. The compensatory time off may be
 21 provided only:

22 (1)(A) Pursuant to applicable provisions of a collective
 23 bargaining agreement, memorandum of understanding or other agreement between
 24 the public agency and representatives of such employees; or

25 (B) In the case of employees not covered by subsection
 26 (g)(1), an agreement or understanding arrived at between the employer and
 27 employee before the performance of the work; and

28 (2) If the employee has not terminated employment and has not
 29 accrued compensatory time in excess of the following:

30 (A) Four hundred eighty (480) hours for police,
 31 firefighters, emergency response personnel and employees engaged in seasonal
 32 activities; or

33 (B) Two hundred forty (240) hours for any public employee
 34 not otherwise exempt or covered by subsection (g)(2)(A).

35
 36 SECTION 5. Arkansas Code § 11-4-218 is amended to read as follows:

1 11-4-218. Employee's remedies.

2 (a)(1) Any employer who pays any employee less than the minimum wages,
3 including overtime compensation or compensatory time off as provided for by
4 this subchapter, to which the employee is entitled under or by virtue of this
5 subchapter shall:

6 (A) Pay any applicable civil penalties; and

7 (B) ~~be~~ Be liable to the employee affected for:

8 (i) ~~the~~ The full amount of the wages, less any
9 amount actually paid to the employee by the employer; and

10 (ii) ~~for costs~~ Costs and such reasonable attorney's
11 fees as may be allowed by the court.

12 (2) The employee may be awarded an additional amount up to but
13 not greater than the amount under subdivision (a)(1)(B)(i) of this section to
14 be paid as liquidated damages.

15 (b) Any agreement between the employee and employer to work for less
16 than minimum wages shall be no defense to the action.

17 (c) The venue of the action shall lie in the circuit court of any
18 county in which the services which are the subject of the employment were
19 performed.

20 (d)(1) The Director of the Department of Labor shall have the
21 authority to fully enforce this subchapter by instituting legal action to
22 recover any wages which he or she determines to be due to employees under
23 this subchapter.

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

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

32 (B) The director's findings of fact shall be conclusive in
33 any such proceeding.

34 (e)(1) An employee may bring an action for equitable and monetary
35 relief against an employer, including the State of Arkansas or a political
36 subdivision of the state, if the employer pays the employee less than the

1 minimum wages, including overtime wages, to which the employee is entitled
 2 under or by virtue of this subchapter.

3 (2) If the employee brings an action under this subsection (e),
 4 then any complaint before the director by the employee on the same matter
 5 shall be dismissed with respect to that employee.

6 (3)(A) The employee shall not be required to exhaust
 7 administrative remedies before bringing an action.

8 (B) There shall be no procedural, pleading, or burden of
 9 proof requirements beyond those that apply generally to civil suits in order
 10 to maintain the action.

11
 12 SECTION 6. Arkansas Code Title 11, Chapter 4, Subchapter 2 is amended
 13 to add an additional section to read as follows:

14 11-4-220. Person entitled to file a claim.

15 (a) Any employee covered by this subchapter may file a claim with the
 16 Director of the Department of Labor charging that an employer has violated §§
 17 11-4-210 or 11-4-211 as to any employee or other person.

18 (b) The director shall promptly investigate each claim.

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

23
 24 SECTION 7. Arkansas Code § 11-4-212(a), concerning the allowance for
 25 gratuities, is amended to read as follows:

26 (a) Every employer of an employee engaged in any occupation in which
 27 gratuities have been customarily and usually constituted and have been
 28 recognized as a part of remuneration for hiring purposes shall be entitled to
 29 an allowance for gratuities as a part of the hourly wage rate provided in §
 30 11-4-210 in an amount not to exceed ~~fifty percent (50%)~~ fifty-eight percent
 31 (58%) of the minimum wage established by § 11-4-210, provided that the
 32 employee actually received that amount in gratuities and that the application
 33 of the foregoing gratuity allowances results in payment of wages other than
 34 gratuities to tipped employees, including full-time students subject to the
 35 provisions of § 11-4-210, of no less than ~~fifty percent (50%)~~ forty-two
 36 percent (42%) of the minimum wage prescribed by § 11-4-210.

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SECTION 8. This act shall become effective on October 1, 2006.

APPROVED: 4/10/2006