

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

INTERIM STUDY PROPOSAL 2007-130

State of Arkansas

As Engrossed: S2/28/07 S3/14/07

86th General Assembly

A Bill

Regular Session, 2007

SENATE BILL 248

By: Senator Madison

Referred to

Public Health, Welfare And Labor Committee - Senate

by the Arkansas Senate

on 03/30/2007

For An Act To Be Entitled

AN ACT TO ESTABLISH REGULAR AND UNIFORM PAY PERIODS FOR ARKANSAS EMPLOYERS AND EMPLOYEES; INCREASING THE WAYS IN WHICH EMPLOYERS MAY PAY WAGES TO THEIR EMPLOYEES; ESTABLISHING THE TIME AND METHOD OF PAYING EMPLOYEES' WAGES FOLLOWING TERMINATION OF EMPLOYMENT; ESTABLISHING REMEDIES FOR VIOLATIONS; ADJUSTING THE AMOUNT IN CONTROVERSY FOR WAGE DISPUTES TO BE DECIDED BY THE DIRECTOR OF THE DEPARTMENT OF LABOR; REPEALING ARKANSAS CODE §§ 11-4-403 AND 11-4-404; AND FOR OTHER PURPOSES.

Subtitle

AN ACT TO ESTABLISH REGULAR AND UNIFORM WAGE POLICIES FOR EMPLOYERS AND EMPLOYEES.

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

SECTION 1. Arkansas Code § 11-4-101 is repealed.

~~§ 11-4-101. Assignment of wages.~~

~~(a) No assignment or order for wages to be earned in the future to~~

1 ~~secure a loan of less than two hundred dollars (\$200) shall be valid against~~
 2 ~~any employer of the person making the assignment or order until the~~
 3 ~~assignment or order is accepted in writing by the employer and the assignment~~
 4 ~~or order and the acceptance of it has been filed with the recorder of the~~
 5 ~~county where the party making the assignment or order resides if a resident~~
 6 ~~of this state or in the state where he or she is employed.~~

7 ~~(b) No assignment of or order for wages to be earned in the future~~
 8 ~~shall be valid when made by a married man, unless the written consent of his~~
 9 ~~wife to making such assignment or order for wages shall be attached thereto.~~

11 SECTION 2. Arkansas Code § 11-4-301 is amended to read as follows:

12 11-4-301. Definition.

13 ~~(a) For the purpose of this subchapter only, unless the context~~
 14 ~~otherwise requires,~~ the term "labor" shall include all or any work or service
 15 performed by any person employed for any period of time ~~where~~ when the wages
 16 or salary or remuneration for the work or services is to be paid at stated
 17 intervals or at the termination of the employment, or for physical work
 18 actually performed by an independent contractor, provided that the amount in
 19 controversy does not exceed ~~the sum of one thousand dollars (\$1,000)~~ fifty
 20 percent (50%) of the federal poverty guideline for a family of one in the
 21 State of Arkansas as determined by the United States Department of Health and
 22 Human Services under 42 U. S. C. 9902(2), as it existed on January 1, 2007.

23 ~~(b) On January 1 of each year thereafter, the Director of the~~
 24 ~~Department of Labor shall adjust the amount in controversy by adding to the~~
 25 ~~previous year's figure the percentage increase or decrease in the Consumer~~
 26 ~~Price Index for All Urban Consumers or its successor as published by the~~
 27 ~~United State Department of Labor for the previous year.~~

29 SECTION 3. Arkansas Code § 11-4-401 is amended to read as follows:

30 § 11-4-401. ~~Payment semi-monthly~~ Regular pay periods.

31 ~~(a)(1) Except as provided in subsection (c) of this section, all~~
 32 ~~corporations doing business in this state who shall employ any salespersons,~~
 33 ~~mechanics, laborers, or other servants for the transaction of their business~~
 34 ~~shall pay the wages of the employees semi-monthly.~~ Every employer shall
 35 establish and maintain regular pay periods as provided in this section and
 36 shall communicate those pay periods, in advance, to all employees.

1 (2) Communication may be accomplished in writing or through a
 2 posted notice maintained in a place accessible to employees.

3 ~~(b)(1) Any corporation that shall, through its president or otherwise,~~
 4 ~~violate subsections (a) and (c) of this section shall be deemed guilty of a~~
 5 ~~misdemeanor and on conviction shall be fined in any sum not less than fifty~~
 6 ~~dollars (\$50.00) nor more than five hundred dollars (\$500) for each offense.~~
 7 Except as provided in subdivision (b)(2) of this section, every employer
 8 shall pay all wages to its employees:

9 (A) At least semimonthly; and

10 (B) Not later than eight (8) calendar days after the end
 11 of the pay period in which the wages were earned.

12 (2)(A) An employer may pay all wages due to a high-ranking
 13 employee monthly or as determined by written agreement between the employer
 14 and the high-ranking employee.

15 (B) As used in this subsection (b)(2), "high-ranking
 16 employee" means an employee who:

17 (i) Is at least a ten percent (10%) owner of the
 18 corporation, partnership, or other organization;

19 (ii) Is in the top ten percent (10%) of employees
 20 when ranked by compensation and receives at least one hundred fifty thousand
 21 dollars (\$150,000) in annual compensation from the employer; or

22 (iii) Is an officer whose annual compensation from
 23 the employer exceeds one hundred thirty thousand dollars (\$130,000).

24 (3) Subdivision (b)(1)(A) of this section shall not apply to
 25 public school districts.

26 (4) Any public institution of higher education paying employees
 27 monthly as of the effective date of this subdivision shall, on or before July
 28 1, 2008, allow those employees to choose whether to be paid monthly or semi -
 29 monthly.

30 ~~(c) All corporations with an annual gross income of five hundred~~
 31 ~~thousand dollars (\$500,000), or more, doing business in this state who shall~~
 32 ~~employ any salespersons, mechanics, laborers, or other servants for the~~
 33 ~~transaction of their business shall pay the wages of their management level~~
 34 ~~and executive employees who are exempt under the provisions of Section 213 of~~
 35 ~~the Fair Labor Standards Act, from the provisions of Sections 206 and 207 of~~
 36 ~~that act, and who are compensated at a gross rate in excess of twenty-five~~

1 ~~thousand dollars (\$25,000) per year, at a minimum of once each calendar month~~
 2 Upon payment of wages, every employer shall provide an itemized statement of
 3 deductions from wages.

4
 5 SECTION 4. Arkansas Code § 11-4-402 is amended to read as follows:

6 11-4-402. Discount for advance payment - ~~Payments made in currency~~
 7 method of payment.

8 (a) It shall be unlawful for any ~~milling or manufacturing company, or~~
 9 ~~any other person, corporation, or company employing persons to labor for them~~
 10 ~~in the State of Arkansas,~~ employer to discount the wages of ~~their~~ its
 11 ~~employees or laborers~~ when payment is made or demanded before the regular
 12 paydays more than at the rate of ten percent (10%) per annum from the date of
 13 payment to the regular payday.

14 (b)(1)(A) ~~All~~ The wages of all employees shall be paid in currency or
 15 by check, or electronic direct deposit, or debit card into the employee's
 16 account.

17 (B)(i) The employer may opt out of payment by electronic
 18 direct deposit by providing the employer a written statement requesting
 19 payment by check or debit card.

20 (ii) An employer requiring payment by electronic
 21 direct deposit or debit card shall notify employees of their right to opt
 22 out.

23 (C)(i) Whatever the form of payment, wages shall be
 24 redeemable for cash and payable on demand without discount or deduction from
 25 the face amount of the wages at an established place of business in the
 26 state.

27 (ii) If payment is made by check or debit card, the
 28 name and address of the established place of business in the State of
 29 Arkansas where payment is redeemable for cash shall appear on or be attached
 30 to the instrument.

31 (2) ~~Notwithstanding any provision to the contrary, an~~ An
 32 employee ~~has a~~ shall have the right to be paid in currency if the employer
 33 has at any time within the past one (1) year paid the employee with a check
 34 drawn on an account with insufficient funds.

35 (3) This subsection (b) does not apply to any demand or claim by
 36 the Department of Labor.

1 ~~(c) Any evasion or violation of this section shall be usury and a~~
2 ~~misdemeanor. The person, company, or corporation, or his, her, or its agents,~~
3 ~~violating this section shall be fined in any sum not less than ten dollars~~
4 ~~(\$10.00) nor more than five hundred dollars (\$500), and the entire property~~
5 ~~of the person, company, or corporation shall be subject to the payment of the~~
6 ~~fine and costs.~~

7
8 SECTION 5. Arkansas Code § 11-4-403 is repealed.

9 ~~§ 11-4-403. Payment by evidence of indebtedness.~~

10 ~~(a) It shall be unlawful for any corporation, company, firm, or person~~
11 ~~engaged in any trade or business in this state, either directly or~~
12 ~~indirectly, to issue, sell, give, or deliver to any person employed by the~~
13 ~~corporation, company, firm, or person, in payment of wages, whether the wages~~
14 ~~are earned or not, any scrip, token, draft, check, or other evidence of~~
15 ~~indebtedness payable or redeemable otherwise than in lawful money, at the~~
16 ~~next regular payday of the corporation, company, firm, or person.~~

17 ~~(b) If the scrip, token, draft, check, or other evidence of~~
18 ~~indebtedness is issued, sold, given or delivered to the laborer, it shall be~~
19 ~~construed, taken, and held in all courts and places to be a promise to pay~~
20 ~~the sum specified therein in lawful money by the corporation, company, firm,~~
21 ~~or person issuing, selling, giving, or delivering the same to the person~~
22 ~~named therein or the holder thereof.~~

23 ~~(c) The corporation, company, firm, or person issuing, selling,~~
24 ~~giving, or delivering the evidence of indebtedness in violation of subsection~~
25 ~~(a) of this section shall, moreover, be guilty of a misdemeanor and upon~~
26 ~~conviction shall be fined not less than twenty five dollars (\$25.00) and not~~
27 ~~more than one hundred dollars (\$100). At the discretion of the court trying~~
28 ~~the action, the officer or agent of the corporation, company, firm, or person~~
29 ~~issuing, selling, giving, or delivering the evidence of indebtedness may be~~
30 ~~imprisoned not less than ten (10) nor more than thirty (30) days.~~

31 ~~(d) In any suit by any holder of the scrip, token, draft, check, or~~
32 ~~other evidence of indebtedness or in any prosecution under the provisions of~~
33 ~~this section, it shall not be required of the plaintiff in the suit or the~~
34 ~~state in the prosecution to prove that the scrip, token, draft, check, or~~
35 ~~other evidence of indebtedness was sold, given, issued, or delivered by the~~
36 ~~defendant in the suit or prosecution to any laborer or employee in payment of~~

1 ~~wages of the laborer or employee.~~

2 ~~(e) The provisions of this section do not apply to coal mines when~~
3 ~~fewer than twenty (20) men are employed under the ground.~~

4
5 SECTION 6. Arkansas Code § 11-4-404 is repealed.

6 ~~§ 11-4-404. Payment by sale of goods or supplies.~~

7 ~~(a) If any corporation, company, firm, or person shall coerce or~~
8 ~~compel or attempt to coerce or compel any employee in its employment to~~
9 ~~purchase goods or supplies in payment of wages, whether the wages are earned~~
10 ~~or not, from any corporation, company, firm, or person, the first named~~
11 ~~corporation, company, firm, or person shall be guilty of a misdemeanor and~~
12 ~~upon conviction shall be punished as provided in § 11-4-403.~~

13 ~~(b) If any corporation, company, firm, or person shall directly or~~
14 ~~indirectly sell to any employee in payment of wages, whether earned or not,~~
15 ~~goods and supplies at prices higher than a reasonable or current market value~~
16 ~~thereof in cash, the corporation, company, firm, or person shall be liable to~~
17 ~~the employee in a civil action in double the amount of the charges made and~~
18 ~~paid for any goods and supplies in excess of the reasonable or current value~~
19 ~~in cash thereof.~~

20 ~~(c) The provisions of this section do not apply to coal mines when~~
21 ~~fewer than twenty (20) men are employed under the ground.~~

22
23 SECTION 7. Arkansas Code § 11-4-405 is amended to read as follows:

24 11-4-405. Payment on discharge termination of employment.

25 (a)(1) ~~Whenever any railroad company or corporation or any receiver~~
26 ~~operating any railroad engaged in the business of operating or constructing~~
27 ~~any railroad or railroad bridge shall discharge, with or without cause, or~~
28 ~~refuse to further employ any servant or employee thereof, the unpaid wages of~~
29 ~~the servant or employee then earned at the contract rate, without abatement~~
30 ~~or deduction, shall be and become due and payable on the day of the discharge~~
31 ~~or refusal to longer employ.~~

32 ~~(2) Any servant or employee may request of his foreman or the~~
33 ~~keeper of his or her time to have the money due him or her, or a valid check~~
34 ~~therefor, sent to any station where a regular agent is kept. If the money or~~
35 ~~a valid check therefor does not reach the station within seven (7) days from~~
36 ~~the date it is so requested, then, as a penalty for the nonpayment, the wages~~

1 ~~of the servant or employee shall continue from the date of the discharge or~~
2 ~~refusal to further employ at the same rate until paid. However, the wages~~
3 ~~shall not continue more than sixty (60) days unless an action therefor shall~~
4 ~~be commenced within that time. When an employer discharges an employee, the~~
5 ~~employer shall pay the employee his or her unpaid wages within seven (7)~~
6 ~~calendar days of termination.~~

7 (b) ~~This section shall apply to all companies and corporations doing~~
8 ~~business in this state and to all servants and employees thereof. Any~~
9 ~~servants or employees who shall hereafter be discharged or refused further~~
10 ~~employment may request or demand the payment of any wages due and, if not~~
11 ~~paid within seven (7) days from discharge or refusal to longer employ, then~~
12 ~~the penalties provided in subdivision (a)(2) of this section for railway~~
13 ~~employees shall attach. When an employee resigns his or her employment, the~~
14 ~~employer shall pay the employee his or her unpaid wages no later than the day~~
15 ~~the employee would have otherwise been paid for those unpaid wages.~~

16 (c) ~~Any servant or employee whose employment is for a definite period~~
17 ~~of time and who is discharged without cause before the expiration of that~~
18 ~~time may, in addition to the penalties prescribed by this section, have an~~
19 ~~action against any employer for any damages he or she may have sustained by~~
20 ~~reason of the wrongful discharge, and the action may be joined with an action~~
21 ~~for unpaid wages and penalty. Regardless of whether the termination is~~
22 ~~voluntary or involuntary, the employer shall pay the employee's unpaid wages~~
23 ~~in the same form of payment as the last prior wage payment to the employee,~~
24 ~~unless the employee requests in writing on or before the date of termination~~
25 ~~to be paid by check by mail to the mailing address provided in the employee's~~
26 ~~written request or to the employee's last known mailing address if no address~~
27 ~~is provided in the employee's written request.~~

28 (d) ~~No servant or employee who secretes or absents himself to avoid~~
29 ~~payment to him or her, or refuses to receive payment when fully tendered,~~
30 ~~shall be entitled to any benefit under this section for the time as he or she~~
31 ~~so avoids payment.~~

32 (1) ~~For the purposes of this section, the final wages of an~~
33 ~~employee who resigns or is discharged shall include any vacation pay or other~~
34 ~~compensatory time that is owed to the employee by virtue of company policy or~~
35 ~~labor agreement.~~

36 (2) ~~This subsection (d) does not require employers to:~~

1 (A) Provide paid or unpaid vacations; or

2 (B) Establish written vacation policies.

3 (e) If an employer pays an employee's final wages in full in the time
4 and manner required by this section, but through no fault of the employer,
5 the employee does not receive his or her wages, there shall be no violation
6 of this section and the employee may not recover more than the amount of the
7 final wages not received.

8

9 SECTION 8. Arkansas Code Title 11, Chapter 4, subchapter 4 is amended
10 to add an additional section to read as follows:

11 11-4-406. Consent for wage deductions.

12 No employer shall make a deduction from an employee's wages, whether
13 final or otherwise, unless the deductions are:

14 (1) Required by law or court order;

15 (2) For medical or other health insurance, life insurance,
16 disability benefits, retirement benefits, or union dues; or

17 (3)(A) Made with the express written consent of the employee,
18 given freely at the time the deduction is made or at the time the first
19 deduction is made for a recurring deduction of the same amount.

20 (B) The written consent shall specify a lawful purpose for
21 the deduction, identify the amount to be withheld, and clearly indicate that
22 the deduction is to be withheld from the employee's wages.

23

24 SECTION 9. Arkansas Code title 11, chapter 4, subchapter 4 is amended
25 to add an additional section to read as follows:

26 11-4-407. Remedies.

27 (a)(1) If an employer fails to comply with this subchapter, the
28 employee may recover, in a civil action, the wages due him or her, damages in
29 an amount equal to three (3) times the wages wrongfully withheld, costs, and
30 reasonable attorney's fee.

31 (2) However, the employer shall be liable only for costs and the
32 wages erroneously withheld if the employer shows by a preponderance of the
33 evidence that its noncompliance:

34 (A) Resulted from an error which occurred despite the
35 existence of procedures reasonably designed to avoid the error; or

36 (B) Was based on a good faith dispute as to the amount

1 due.

2 (b)(1)(A) In the alternative, an employee aggrieved under this
3 subchapter may instead, pursuant to § 11-4-301 et seq., apply to the Director
4 of the Department of Labor for relief.

5 (B) If the director determines that an employer has
6 violated this subchapter, the director may award any of the remedies set
7 forth in subsection (a) of this section.

8 (C) If the director determines that an employer has
9 violated this subchapter but that the aggrieved employee has suffered no loss
10 in wages, the director may subject the employer to a civil penalty of not
11 fewer than fifty dollars (\$50.00) and not more than one thousand dollars
12 (\$1,000.00) for each individual or group violation.

13 (2) In making an award to an employee or in subjecting an
14 employer to a civil penalty, the director shall consider:

15 (A) The defenses in subsection (a)(2) of this section;

16 (B) The willfulness of the violation;

17 (C) The size of the employer; and

18 (D) The severity of the violation.

19 (c) No employer shall retaliate or otherwise discriminate against an
20 employee for making a complaint of a violation of this subchapter or
21 furnishing information concerning a violation to a person, an entity, or a
22 business or to an enforcement authority.

23 (d)(1) An employee aggrieved under this subchapter may bring an action
24 or file a claim with the Director of the Department of Labor pursuant to
25 Arkansas Code § 11-4-301 et seq. within one (1) year of the alleged
26 violation.

27 (2) The Director of the Department of Labor shall bring an
28 action based on a violation of this subchapter within one (1) year of a final
29 administrative determination concerning the alleged violation or three (3)
30 years of the occurrence of the alleged violation, whichever is later.

31
32 */s/ Madison*

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