

1 State of Arkansas  
2 81st General Assembly  
3 Regular Session, 1997

# A Bill

HOUSE BILL 1585

4  
5 By: Representative Wilson

## For An Act To Be Entitled

9 "AN ACT PERTAINING TO THE WRONGFUL DISCHARGE FROM EMPLOYMENT; AND  
10 FOR OTHER PURPOSES."

## Subtitle

15 "AN ACT PERTAINING TO THE WRONGFUL  
16 DISCHARGE FROM EMPLOYMENT; AND FOR OTHER  
17 PURPOSES."

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

### SECTION 1. For purposes of this act:

23 (a) ~~Constructive discharge~~ means the voluntary termination of  
24 employment by an employee because of a situation created by an act or omission  
25 of the employer which an objective, reasonable person would find so  
26 intolerable that voluntary termination is the only reasonable alternative.  
27 Constructive discharge does not mean voluntary termination because of an  
28 employer's refusal to promote the employee or improve wages,  
29 responsibilities, or other terms and conditions of employment.

30 (b) ~~Discharge~~ means constructive discharge as defined in this  
31 section and any other termination of employment, including resignation,  
32 elimination of the job, layoff for lack of work, failure to recall or rehire,  
33 and any other cutback in the number of employees for a legitimate business  
34 reason.

35 (c) ~~Employee~~ means an individual who works for hire, including an  
36 individual employed in a supervisory, managerial, or confidential position,

1 but does not include a person who is an independent contractor.

2 (d) "Employer" means a person that has employed five (5) or more  
 3 employees for each working day in each of twenty (20) or more calendar weeks  
 4 in the two (2) year period immediately preceding a termination, excluding:

5 (1) A parent, spouse, child, or other member of the employer's  
 6 immediate family or of the immediate family of an individual having a  
 7 controlling interest in the employer;

8 (2) This state, a political subdivision, county, school district,  
 9 a municipal corporation, or any other governmental subdivision, agency, or  
 10 instrumentality.

11 (e) "Fringe benefits" means the value of any employer-paid vacation  
 12 leave, sick leave, medical insurance plan, disability insurance plan, life  
 13 insurance plan, and pension benefit plan in force on the date of the  
 14 termination.

15 (f) "Good cause" means:

16 (i) a reasonable basis for termination of the employee's  
 17 employment in view of relevant factors and circumstances, including the  
 18 employee's duties, responsibilities, conduct on the job or otherwise, job  
 19 performance, and employment record; and

20 (ii) the exercise of business judgment in good faith by the  
 21 employer, including setting its economic or institutional goals and  
 22 determining methods to achieve those goals, organizing or reorganizing  
 23 operations, discontinuing, consolidating, or divesting operations or positions  
 24 or parts of operations or positions, determining the size of its work force  
 25 and the nature of the positions filled by its work force, and determining and  
 26 changing standards of performance for positions.

27 (g) "Good faith" means honesty in fact.

28 (h) "Pay" means hourly wages or periodic salary, including tips,  
 29 regularly paid and nondiscretionary commissions and bonuses, and regularly  
 30 paid overtime, but does not include fringe benefits.

31 (i) "Person" means an individual, corporation, estate, trust,  
 32 partnership, association, joint venture, unincorporated association, labor  
 33 union, or any other legal or entity, excluding government and a governmental  
 34 subdivision, agency or instrumentality.

35 (j) "Public policy" means a policy in effect at the time of the  
 36 discharge concerning the public health, safety, or welfare established by

1 constitutional provision, statute, or administrative rule.

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3 SECTION 2. A discharge is wrongful if:

4 (a) It was in retaliation for the employee's refusal to violate public  
 5 policy or for reporting a violation of public policy;

6 (b) The employer violated the express provisions of its own written  
 7 personnel policy; or

8 (c) The discharge was not for good cause.

9 (d) Subsection (c) applies only to an employee who has been employed by  
 10 the same employer for a total period of one (1) year or more and has worked  
 11 for the employer for at least five hundred and twenty (520) hours during the  
 12 twenty-six (26) weeks immediately preceding the termination. A layoff or  
 13 other break in service is not counted in determining whether an employee's  
 14 period of employment totals one (1) year, but the employee is considered to be  
 15 employed during paid vacations and other authorized leaves. If an employee is  
 16 rehired after a break in service exceeding one (1) year, not counting absences  
 17 due to labor disputes or authorized leaves, the employee is considered to be  
 18 newly hired. The twenty-six (26) week period for purposes of this subsection  
 19 does not include any week during which the employee was absent because of  
 20 layoffs of one (1) year or less, paid vacations, authorized leaves, or labor  
 21 disputes.

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23 SECTION 3. (a) If an employer has committed a wrongful discharge, the  
 24 employee may be awarded lost wages and fringe benefits for a period not to  
 25 exceed four (4) years after the date of discharge, together with ten percent  
 26 (10%) interest thereon. Interim earnings, including amounts the employee  
 27 could have earned with reasonable diligence, shall be deducted from the amount  
 28 awarded for lost wages. Before interim earnings are deducted from lost wages,  
 29 there shall be deducted from the interim earnings any reasonable amounts  
 30 expended by the employee in searching for, obtaining, or relocating to new  
 31 employment.

32 (b) The employee may recover punitive damages otherwise allowed by law  
 33 if it is established by clear and convincing evidence that the employer  
 34 engaged in actual fraud or actual malice in the discharge of the employee in  
 35 violation of public policy.

36 (c) There is no right under any legal theory to damages for wrongful

1 discharge under this act for pain and suffering, emotional distress,  
2 compensatory damages, punitive damages, or any other form of damages, except  
3 as provided for in subsections (a) and (b) of this section.

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5 SECTION 4. (a) An action under this act must be filed in the court of  
6 proper jurisdiction within one (1) year after the date of discharge.

7 (b) If an employer maintains written internal procedures, other than  
8 those specified in section 5, under which an employee may appeal a discharge  
9 within the organizational structure of the employer, the employee shall first  
10 exhaust those procedures prior to filing an action under this act. The  
11 employee's failure to exhaust available internal procedures is a defense to  
12 an action brought under this act. If the employer's internal procedures are  
13 not completed within ninety (90) days after the date the employee initiates  
14 the internal procedures, the employee may file an action under this act and  
15 for purposes of this subsection, the employer's internal procedures are  
16 considered exhausted. The limitation period in subsection (a) is tolled until  
17 the procedures are exhausted. In no case may the provisions of the  
18 employer's internal procedures extend the limitation period in subsection (a)  
19 more than one hundred and twenty (120) days.

20 (c) If the employer maintains written internal procedures under which  
21 an employee may appeal a discharge within the organizational structure of the  
22 employer, the employer shall within seven (7) days after the date of the  
23 discharge notify the discharged employee of the existence of such procedures  
24 and shall supply the discharged employee with a copy. If the employer fails  
25 to comply with this subsection, the discharged employee need not comply with  
26 subsection (b).

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28 SECTION 5. This act shall not apply to a discharge:

29 (a) That is subject to any state or federal statute that provides a  
30 procedure or remedy for contesting the dispute. Such statutes include those  
31 that prohibit discharge for filing complaints, charges, or claims with  
32 administrative bodies or that prohibit unlawful discrimination based on  
33 national origin, sex, age, disability, creed, religion, political belief  
34 marital status and other unconstitutional grounds;

35 (b) Of an employee covered by a written collective bargaining agreement  
36 or a written contract of employment for a specific period of time.

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2           SECTION 6. Except as provided in this act, no claim for discharge may  
3 arise from tort or express or implied contract.

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5           SECTION 7. (a) A right of an employee under this act may not be waived  
6 by agreement except as provided in this section.

7           (b) By express written agreement, an employer and an employee may  
8 provide that the employee's failure to meet specified business-related  
9 standards of performance or the employee's commission or omission of  
10 specified business-related acts will constitute good cause for termination in  
11 proceedings under this act. Those standards or prohibitions are effective  
12 only if they have been consistently enforced and they have not been applied to  
13 a particular employee in a disparate manner without justification. If the  
14 agreement authorizes changes by the employer in the standards or prohibitions,  
15 the changes must be communicated to the employee through a written notice.

16           (c) By express written agreement, an employer and an employee may  
17 mutually waive the requirement of good cause for termination, if the employer  
18 agrees that upon the termination of the employee for any reason other than  
19 willful misconduct of the employee, the employer will provide severance pay in  
20 an amount equal to at least one (1) month's pay for each period of employment  
21 totaling one (1) year, up to a maximum total payment equal to thirty (30)  
22 months' pay at the employee's rate of pay in effect immediately before the  
23 termination. The employer shall make the payment in a lump sum or in a series  
24 of monthly installments, none of which may be less than one (1) month's pay  
25 plus ten percent (10%) interest on the principal balance. The lump-sum  
26 payment must be made or payment of the monthly installments must begin within  
27 thirty (30) days after the employee's termination. An agreement under this  
28 subsection constitutes a waiver by the employer and the employee of the right  
29 of civil trial, including jury trial, concerning disputes over the nature of  
30 the termination and the employee's entitlement to severance pay, and  
31 constitutes a stipulation by the parties that those disputes will be subject  
32 to the procedures and remedies of this act.

33           (d) The requirement of good cause for termination does not apply to the  
34 termination of an employee at the expiration of an express oral or written  
35 agreement of employment for a specified duration related to the completion of  
36 a specified task, project, undertaking, or assignment. If the employment

1 continues after expiration of the agreement, section 2 shall apply to the  
 2 termination unless the parties enter into a new express oral or written  
 3 agreement under this subsection.

4 (e) An employer may provide substantive and procedural rights in  
 5 addition to those provided by this act, either to one (1) or more specific  
 6 employees by express oral or written agreement, or to employees generally by a  
 7 written personnel policy or statement, and may provide that those rights are  
 8 enforceable under the procedures of this act.

9 (f) An agreement between an employer and an employee subject to this act  
 10 imposes a duty of good faith in its formation, performance, and enforcement.

11 (g) By express written agreement, an employer and an employee may  
 12 settle at any time a claim arising under this act.

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14 SECTION 8. (a) A party may send by certified mail, return receipt  
 15 requested, written notice to the other party an offer to arbitrate a dispute  
 16 that otherwise could be adjudicated under this act.

17 (b) An offer to arbitrate must be in writing and contain the following  
 18 provisions:

19 (1) Arbitration shall proceed only by mutual agreement of both  
 20 parties;

21 (2) The arbitration must be governed by the Uniform Arbitration  
 22 Act. If there is a conflict between the Uniform Arbitration Act and this act,  
 23 this act applies;

24 (3) The arbitrator is bound by this act.

25 (c) If a complaint is filed under this act, the offer to arbitrate must  
 26 be made within sixty (60) days after service of the complaint and must be  
 27 accepted in writing within thirty (30) days after the date the offer is made.

28 (d) A discharged employee who makes a valid offer to arbitrate that is  
 29 accepted by the employer and who prevails in such arbitration is entitled to  
 30 have the arbitrator's fee and all costs of arbitration paid by the employer.

31 (e) If a valid offer to arbitrate is made and accepted, arbitration is  
 32 the exclusive remedy for the wrongful discharge dispute and there is no right  
 33 to bring or continue an action under this act. The arbitrator's award is  
 34 final and binding, subject to review of the arbitrator's decision under the  
 35 provisions of the Uniform Arbitration Act.

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1           SECTION 9. A party who makes a valid offer to arbitrate that is not  
2 accepted by the other party and who prevails in an action under this act is  
3 entitled as an element of costs to reasonable attorney fees incurred  
4 subsequent to the date of the offer.

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6           SECTION 10. All provisions of this act of a general and permanent  
7 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
8 Code Revision Commission shall incorporate the same in the Code.

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10          SECTION 11. If any provision of this act or the application thereof to  
11 any person or circumstance is held invalid, such invalidity shall not affect  
12 other provisions or applications of the act which can be given effect without  
13 the invalid provision or application, and to this end the provisions of this  
14 act are declared to be severable.

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16          SECTION 12. All laws and parts of laws in conflict with this act are  
17 hereby repealed.

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