

1 State of Arkansas
2 88th General Assembly
3 Regular Session, 2011

A Bill

HOUSE BILL 1445

4
5 By: Representative Nickels

For An Act To Be Entitled

8 AN ACT TO CREATE CRIMINAL PROCEDURES AND PENALTIES
9 FOR FAILURE TO PROVIDE WAGES, FINAL COMPENSATION, OR
10 WAGE SUPPLEMENTS TO AN EMPLOYEE; AND FOR OTHER
11 PURPOSES.

Subtitle

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14 TO CREATE CRIMINAL PROCEDURES AND
15 PENALTIES FOR FAILURE TO PROVIDE WAGES,
16 FINAL COMPENSATION, OR WAGE SUPPLEMENTS
17 TO AN EMPLOYEE.
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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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23 SECTION 1. Arkansas Code Title 11, Chapter 4 is amended to add an
24 additional subchapter to read as follows:

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26 Subchapter 7 -- Failure to Pay Wages, Final Compensation, or
27 Wage Supplements

28
29 11-4-701. Failure to pay wages, final compensation, or wage
30 supplements owed.

31 It is unlawful for an employer to fail to pay within a reasonable time
32 from the date that an employee performed the work for which wages, final
33 compensation, or wage supplements were compensation any portion of wages,
34 final compensation, or wage supplements due to the employee according to the
35 wage rate applicable to the employee.
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1 11-4-702. Joinder of offenses and defendants.

2 (a) Two (2) or more offenses under § 11-4-701 may be charged in the
3 same indictment or information in a separate count for each offense if the
4 offenses charged, whether felonies or misdemeanors, or both, are based on:

5 (1) The same act; or

6 (2) Two (2) or more acts that are part of the same comprehensive
7 transaction.

8 (b)(1) Two (2) or more defendants under § 11-4-701 may be charged in
9 the same indictment or information if they are alleged to have participated
10 in the same act or in the same comprehensive transaction out of which the
11 offense or offenses arose.

12 (2) Defendants charged under subdivision (b)(1) of this section
13 may be charged in one (1) or more counts together or separately.

14 (3) It is not mandatory that all of the defendants under § 11-4-
15 701 be charged in each count.

16 (c)(1) Two (2) or more violations under § 11-4-701 may be charged as a
17 single offense in a single count of the same indictment or information if:

18 (A) The violations by one (1) or more defendants are in
19 furtherance of a single intention and design; or

20 (B) The property, labor, or services belong to or were
21 performed by:

22 (i) The same person; or

23 (ii) Several persons having a common interest in the
24 property, labor, or services.

25 (2) In a charge under subdivision (c)(1) of this section:

26 (A) The period between the dates of the first and the
27 final violation may be alleged as the date of the offense; and

28 (B) If a violation by any defendant was committed in the
29 county where the prosecution was commenced, the county may be alleged as the
30 county of the offense.

31
32 11-4-703. Additional defendants.

33 An individual who is deemed to be an employer under § 11-9-102, an
34 officer of a corporation, or an agent of an employer who knowingly permits
35 the employer to violate § 11-4-701 is deemed to be the employer of the
36 employee against whom the violation occurs.

1
2 11-4-704. Recovery -- Penalties.

3 (a)(1) An employer who violates § 11-4-701 is guilty of a Class A
4 misdemeanor.

5 (2) Each day during which a violation under § 11-4-701 continues
6 is a separate and distinct offense.

7 (3) An employer who violates § 11-4-701 a subsequent time within
8 two (2) years of a previous criminal conviction under § 11-4-701 is guilty of
9 a Class D felony.

10 (b) An employee not timely paid wages, final compensation, or wage
11 supplements by his or her employer under § 11-4-701 is entitled to recover
12 through a claim filed with the Department of Labor or the court, but not
13 both, the amount of the underpayment plus damages of two percent (2%) of the
14 amount of the underpayment for each month following the date of payment
15 during which the underpayment remains unpaid.

16 (c) An employer who has been ordered by the department or by a court
17 to pay wages, final compensation, or wage supplements who fails to seek
18 timely review of the order under this section, and who fails to comply within
19 thirty (30) days after the day the departmental or court order is entered
20 shall pay a penalty for each day of delay in paying the wages, final
21 compensation, or wage supplements to the employee to:

22 (1) The department of twenty percent (20%) of the amount owed;
23 and

24 (2) The employee of one percent (1%) per calendar day of the
25 amount owed.

26 (d)(1) An employer is guilty of a Class C misdemeanor if the employer
27 who knowingly discharges or in any other manner knowingly discriminates
28 against an employee because that employee:

29 (A) Made a complaint that he or she has not been paid
30 under § 11-4-701 to:

31 (i) His or her employer;

32 (ii) The department in a public hearing; or

33 (iii) A community organization;

34 (B) Has caused to be instituted any proceeding under § 11-
35 4-701; or

36 (C) Has testified or is about to testify in an

1 investigation or proceeding under § 11-4-701.

2 (2)(A) An employer who retaliates against an employee under this
3 subchapter is guilty of a Class A misdemeanor.

4 (B) Each day during which a violation under subdivision
5 (2)(A) of this section continues is a separate and distinct offense.

6 (C) An employer who violates subdivision (2)(A) of this
7 section a subsequent time within two (2) years of a previous criminal
8 conviction under subdivision (2)(A) of this section is guilty of a Class D
9 felony.

10 (e)(1) If an employer or an agent of an employer is able to pay wages,
11 final compensation, or wage supplements and is under a duty to pay under §
12 11-4-701 and the employer or an agent of an employer willfully refuses to pay
13 or falsely denies the amount or validity of the duty to pay or that the
14 wages, final compensation, or wage supplements are due with intent to secure
15 for himself or herself or another person an underpayment of the indebtedness
16 or with intent to annoy, harass, oppress, hinder, delay, or defraud the
17 person to whom the indebtedness is due, the employer or agent of the employer
18 is guilty of:

19 (A) For unpaid wages, final compensation, or wage
20 supplements of five thousand dollars (\$5,000) or less, a Class B misdemeanor;
21 or

22 (B) For unpaid wages, final compensation, or wage
23 supplements of more than five thousand dollars (\$5,000), a Class A
24 misdemeanor.

25 (2) Each day during which a violation under § 11-4-701 continues
26 is a separate and distinct offense.

27 (3) An employer or an agent of an employer who violates this
28 subsection a subsequent time within two (2) years of a previous criminal
29 conviction under § 11-4-701 is guilty of a Class D felony.

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31 11-4-705. Department of Labor -- Investigation of failure to pay
32 wages, final compensation, or wage supplements.

33 (a) The Department of Labor shall investigate violations under this
34 subchapter.

35 (b)(1) An employee may file a complaint with the department alleging
36 violations of § 11-4-701 by submitting a signed, completed wage claim

1 application on a form created by and provided by the department along with
2 copies of all supporting documentation.

3 (2) A complaint shall be filed within one (1) year after the
4 wages, final compensation, or wage supplements were due.

5 (c) The department shall review complaints to determine whether there
6 is cause for investigation.

7 (d) The department shall:

8 (1) Investigate and attempt equitably to resolve controversies
9 between employees and employers concerning claims regarding wages, final
10 compensation, or wage supplements under § 11-4-701;

11 (2)(A) Administer oaths, subpoena and examine witnesses, issue
12 subpoenas duces tecum requiring the production of books, papers, records, and
13 documents, and examine and inspect books, papers, records, and documents that
14 may relate to the question in dispute.

15 (B) A court of competent jurisdiction upon the application
16 of the department may compel attendance of witnesses, the production of
17 books, papers, records, and documents, and the giving of testimony before the
18 department by attachment for contempt or in any other way as the production
19 of evidence may be compelled before the court;

20 (3) Refer violations of § 11-4-701 to the appropriate
21 prosecuting attorney;

22 (4) Make the provisions of this subchapter easily identified on
23 the department's website; and

24 (5) Include on the department's website a list of the names and
25 addresses of businesses found to have violated § 11-4-701.

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27 11-4-706. Applicability -- Employees -- Prosecuting attorneys --
28 Scope.

29 This subchapter does not limit the authority of a prosecuting attorney
30 of any county to prosecute actions for violation of § 11-4-701 or to enforce
31 this subchapter independently and without specific direction of the
32 Department of Labor.