

1 State of Arkansas
2 88th General Assembly
3 Regular Session, 2011
4

As Engrossed: H2/24/11

A Bill

HOUSE BILL 1445

5 By: Representative Nickels
6

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.
12
13

Subtitle

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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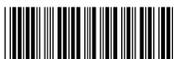
23 SECTION 1. Arkansas Code Title 11, Chapter 4 is amended to add an
24 additional subchapter to read as follows:
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26 Subchapter 7 -- Failure to Pay Wages, Final Compensation, or
27 Wage Supplements
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29 11-4-701. Definition.

30 As used in this subchapter, "employee" means a person who is or was
31 employed for work or service performed for a period of time for which wages,
32 salary, or remuneration for the work or services is to be paid at stated
33 intervals or at the termination of the employment or for physical work
34 actually performed by an independent contractor.
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36 11-4-702. Failure to pay wages, final compensation, or wage



1 supplements owed.

2 It is unlawful for an employer to fail to pay within *fourteen (14)*
3 *business days* from the date that an employee performed the work for which
4 wages, final compensation, or wage supplements were compensation any portion
5 of wages, final compensation, or wage supplements due to the employee
6 according to the wage rate applicable to the employee.

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8 11-4-703. Joinder of offenses and defendants.

9 (a) Two (2) or more offenses under § 11-4-702 may be charged in the
10 same indictment or information in a separate count for each offense if the
11 offenses charged, whether felonies or misdemeanors, or both, are based on:

12 (1) The same act; or

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

15 (b)(1) Two (2) or more defendants under § 11-4-702 may be charged in
16 the same indictment or information if they are alleged to have participated
17 in the same act or in the same comprehensive transaction out of which the
18 offense or offenses arose.

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

21 (3) It is not mandatory that all of the defendants under § 11-4-
22 702 be charged in each count.

23 (c)(1) Two (2) or more violations under § 11-4-702 may be charged as a
24 single offense in a single count of the same indictment or information if:

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

27 (B) The property, labor, or services belong to or were
28 performed by:

29 (i) The same person; or

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

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

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

35 (B) If a violation by any defendant was committed in the
36 county where the prosecution was commenced, the county may be alleged as the

1 county of the offense.

2
3 11-4-704. Additional defendants.

4 An individual who is deemed to be an employer under § 11-9-102(10), an
5 officer of a corporation, or an agent of an employer who knowingly permits
6 the employer to violate § 11-4-702 is deemed to be the employer of the
7 employee against whom the violation occurs.

8
9 11-4-705. Recovery -- Penalties.

10 (a)(1) An employer who violates § 11-4-702 is guilty of a Class A
11 misdemeanor.

12 (2) Each day during which a violation under § 11-4-702 continues
13 is a separate and distinct offense.

14 (3) An employer who violates § 11-4-702 a subsequent time within
15 two (2) years of a previous criminal conviction under § 11-4-702 is guilty of
16 a Class D felony.

17 (b) An employee not timely paid wages, final compensation, or wage
18 supplements by his or her employer under § 11-4-702 is entitled to recover
19 through a claim filed with the Department of Labor or the court, but not
20 both, the amount of the underpayment plus damages of two percent (2%) of the
21 amount of the underpayment for each month following the date of payment
22 during which the underpayment remains unpaid.

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

29 (1) The department of twenty percent (20%) of the amount owed;
30 and

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

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

36 (A) Made a complaint that he or she has not been paid

1 under § 11-4-702 to:

2 (i) His or her employer;

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

4 (iii) A community organization;

5 (B) Has caused to be instituted any proceeding under § 11-
6 4-702; or

7 (C) Has testified or is about to testify in an
8 investigation or proceeding under § 11-4-702.

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

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

13 (C) An employer who violates subdivision (2)(A) of this
14 section a subsequent time within two (2) years of a previous criminal
15 conviction under subdivision (2)(A) of this section is guilty of a Class D
16 felony.

17 (e)(1) If an employer or an agent of an employer is able to pay wages,
18 final compensation, or wage supplements and is under a duty to pay under §
19 11-4-702 and the employer or an agent of an employer willfully refuses to pay
20 or falsely denies the amount or validity of the duty to pay or that the
21 wages, final compensation, or wage supplements are due with intent to secure
22 for himself or herself or another person an underpayment of the indebtedness
23 or with intent to annoy, harass, oppress, hinder, delay, or defraud the
24 person to whom the indebtedness is due, the employer or agent of the employer
25 is guilty of:

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

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

32 (2) Each day during which a violation under § 11-4-702 continues
33 is a separate and distinct offense.

34 (3) An employer or an agent of an employer who violates this
35 subsection a subsequent time within two (2) years of a previous criminal
36 conviction under § 11-4-702 is guilty of a Class D felony.

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2 11-4-705. Department of Labor -- Investigation of failure to pay
3 wages, final compensation, or wage supplements.

4 (a) The Department of Labor shall investigate violations under this
5 subchapter.

6 (b)(1) An employee may file a complaint with the department alleging
7 violations of § 11-4-702 by submitting a signed, completed wage claim
8 application on a form created by and provided by the department along with
9 copies of all supporting documentation.

10 (2) A complaint shall be filed within three (3) years after the
11 wages, final compensation, or wage supplements were due.

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

14 (d) The department shall:

15 (1) Investigate and attempt equitably to resolve controversies
16 between employees and employers concerning claims regarding wages, final
17 compensation, or wage supplements under § 11-4-702;

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

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

27 (3) In the sole discretion of the Director of the Department of
28 Labor:

29 (A) Treat violations of § 11-4-702 under the procedures
30 set out in §§ 11-4-303 and 11-4-304; or

31 (B) Refer violations of § 11-4-702 to the appropriate
32 prosecuting attorney;

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

35 (5) Include on the department's website a list of the names and
36 addresses of businesses found to have violated § 11-4-702.

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11-4-707. Applicability -- Employees -- Prosecuting attorneys --
Scope.

This subchapter does not limit the authority of a prosecuting attorney
of any county to prosecute actions for violation of § 11-4-702 or to enforce
this subchapter independently and without specific direction of the
Department of Labor.

/s/Nickels