

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 SENATE BILL 1990

By: Ballenger

4  
5  
6 AS INTRODUCED

7 An Act relating to labor; amending 40 O.S. 2001,  
8 Section 165.1, as amended by Section 1, Chapter 359,  
9 O.S.L. 2005, Section 165.2, as last amended by  
10 Section 1, Chapter 164, O.S.L. 2009, and Section  
11 165.7 (40 O.S. Supp. 2009, Sections 165.1 and 165.2),  
12 which relate to definitions, statement of deductions,  
13 and administrative proceedings; including limited  
14 liability company and partnership in definitions;  
15 authorizing Department of Labor to assess  
16 administrative fines for failure to provide wage  
17 deduction statement; directing deposit of certain  
18 monies; authorizing payment of reasonable costs of  
19 service; amending 28 O.S. 2001, Section 152, as last  
20 amended by Section 2, Chapter 247, O.S.L. 2007, and  
21 Section 152.1, as last amended by Section 1, Chapter  
22 195, O.S.L. 2006 (28 O.S. Supp. 2009, Section 152 and  
23 152.1), which relate to fees; exempting certain  
24 agency and judgment creditor from certain fees;  
amending 21 O.S. 2009, Section 1541.1 and 1541.4, as  
last amended by Section 1, Chapter 428, O.S.L. 2009  
(21 O.S. Supp. 2009, Section 1541.4), which relate to  
obtaining something of value by trick or deception  
and false or bogus check; adding obtaining labor as  
element of certain crimes; repealing 40 O.S. 2001,  
Sections 196.1, 196.2, 196.2a, 196.3, 196.4, 196.5,  
196.5b, 196.6, 196.7, 196.8, 196.9, 196.9a, 196.10,  
196.10a, 196.11, 196.11a, 196.12, 196.13 and 196.14;  
which relate to prevailing wage, definitions, public  
projects, violations Wage Appeal Board, and the  
Commissioner of Labor; providing an effective date;  
and declaring an emergency.

1 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

2 SECTION 1. AMENDATORY 40 O.S. 2001, Section 165.1, as  
3 amended by Section 1, Chapter 359, O.S.L. 2005 (40 O.S. Supp. 2009,  
4 Section 165.1), is amended to read as follows:

5 Section 165.1 As used only in Sections 165.1 through 165.11 of  
6 this title:

7 1. "Employer" means every individual, partnership, firm,  
8 association, corporation, limited liability company, limited  
9 liability partnership, the legal representative of a deceased  
10 individual, or the receiver, trustee or successor of an individual,  
11 firm, partnership, association or corporation, limited liability  
12 company, limited liability partnership, employing any person in this  
13 state;

14 2. "Employee" means any person permitted to work by an  
15 employer;

16 3. "Exempt employee" means those management level employees  
17 exempt under the provisions of Section 213 of the Fair Labor  
18 Standards Act, as amended, 29 U.S.C. Section 213, from the  
19 provisions of Sections 206 and 207 of said act;

20 4. "Wages" means compensation owed by an employer to an  
21 employee for labor or services rendered, including salaries,  
22 commissions, holiday and vacation pay, overtime pay, severance or  
23 dismissal pay, bonuses and other similar advantages agreed upon  
24 between the employer and the employee, which are earned and due, or

1 provided by the employer to his employees in an established policy,  
2 whether the amount is determined on a time, task, piece, commission  
3 or other basis of calculation;

4 5. "Commissioner" means State Commissioner of Labor; and

5 6. "Bona fide disagreement" means an honest and sincere belief  
6 or assertion based on a dispute of a determinative fact or  
7 application of law under this title which is supported by relevant  
8 evidence.

9 SECTION 2. AMENDATORY 40 O.S. 2001, Section 165.2, as  
10 last amended by Section 1, Chapter 164, O.S.L. 2009 (40 O.S. Supp.  
11 2009, Section 165.2), is amended to read as follows:

12 Section 165.2 Every employer in this state shall pay all wages  
13 due the employees, other than exempt employees and employees of  
14 nonprivate foundations qualified pursuant to 26 U.S.C. 509(a)(1) and  
15 26 U.S.C. 170(b)(1)(A)(vi), at least twice each calendar month on  
16 regular paydays designated in advance by the employer. State,  
17 county and municipal employees, exempt employees, and employees of  
18 nonprivate foundations qualified pursuant to 26 U.S.C. 509(a)(1) and  
19 26 U.S.C. 170(b)(1)(A)(vi) shall be paid a minimum of once each  
20 calendar month. The amount due such employees shall be paid in  
21 lawful money of the United States, including payment by electronic  
22 means, and the employee shall not be deemed to have waived any right  
23 or rights mentioned in this section because of any contract to the  
24 contrary. With each payment of wages earned by such employee, the

1 employer shall issue to such employee a brief itemized statement of  
2 any and all deductions therefrom. An interval of not more than  
3 eleven (11) days may elapse between the end of the pay period worked  
4 and the regular payday designated by the employer. The employer  
5 shall be allowed three (3) days after such payday in which to comply  
6 with this section.

7 No such employer shall issue, in payment of or as evidence of  
8 indebtedness due an employee any check, cashier's check, draft, time  
9 check, store order, scrip, or other acknowledgment of indebtedness  
10 unless the same is payable or redeemable upon demand without  
11 discount and for face value in lawful money of the United States.  
12 If an employer pays an employee with a check which is subsequently  
13 returned to the employee or an agent thereof by reason of the  
14 refusal of the bank upon which such check was drawn to honor the  
15 same due to insufficient funds or a stop payment notice, the  
16 employer shall reimburse the employee for any fees or costs incurred  
17 by the employee due to the refusal to honor the check within  
18 fourteen (14) days of the employer's notice of the bank's refusal to  
19 honor the check.

20 The Commissioner of Labor or designee is hereby authorized to  
21 assess an administrative fine of Fifty Dollars (\$50.00) against an  
22 employer operating in this state who is found to have failed to  
23 issue an employee a brief itemized statement of all deductions from  
24 the amount of wages due. Each failure to issue a brief itemized

1 statement of all deductions shall constitute a separate offense.  
2 All administrative fines collected pursuant to this section shall be  
3 deposited to the Department of Labor Revolving Fund.

4 SECTION 3. AMENDATORY 40 O.S. 2001, Section 165.7, is  
5 amended to read as follows:

6 Section 165.7 A. The Commissioner of Labor shall enforce and  
7 administer the provisions of this act and in any case where a civil  
8 action may be brought for the collection of a wage claim, the  
9 Commissioner of Labor may provide for an administrative proceeding  
10 to determine the validity and enforce collection of the claim. The  
11 administrative proceeding shall be conducted according to the  
12 Administrative Procedures Act.

13 B. In any case when the Commissioner has received a wage  
14 complaint, the Commissioner may seek collection of such claim  
15 through administrative proceedings in a manner provided in this  
16 section. The Commissioner may join in a single administrative  
17 proceeding any number of wage claims against the same employer. The  
18 Commissioner shall serve upon the employer an order of determination  
19 directing the employer to pay to the Commissioner the amount of the  
20 wage claim ~~and~~, any penalty amounts, and reasonable costs of  
21 service. Service shall be made by regular mail to the employer's  
22 last-known address. The order of determination shall include:

23 1. A reference to the particular sections of the statutes or  
24 rules involved;

1           2. A short and concise statement of the basis for the amounts  
2 determined to be owed to each wage claimant;

3           3. A statement that the employer within twenty (20) days after  
4 receipt of the order of determination must pay in full the wage  
5 claim and any penalties assessed on appeal to district court; and

6           4. A statement that unless a written request for  
7 reconsideration is received by the Commissioner or the order is  
8 appealed to district court within the time specified, the order of  
9 determination shall become final.

10          C. Upon failure of the employer to pay the amount specified in  
11 the order of determination or to request reconsideration or appeal  
12 to district court, the order of determination shall become final.

13          D. A hearing shall be held in accordance with the applicable  
14 provisions of the Administrative Procedures Act by the Commissioner  
15 or the Commissioner's designee. The Commissioner shall adopt rules  
16 for such hearing. In any hearing before the Commissioner's  
17 designee, the designee is authorized to issue the final order in the  
18 case.

19          E. Final administrative orders issued in a wage claim  
20 proceeding are subject to appeal pursuant to the Administrative  
21 Procedures Act.

22          F. When an order under this section becomes final by operation  
23 of law or an appeal, and the amount due is not paid within twenty  
24 (20) days after the order becomes final, the order may be recorded

1 with the county clerk in any county of this state. The clerk shall  
2 thereupon record the name of the person incurring the penalty and  
3 the amount of the penalty in the county clerk's lien record. The  
4 order may be collected as any other money judgment.

5 G. The remedies provided by Sections 165.1 through 165.11 of  
6 this title shall be additional to and not in substitution for and in  
7 no manner impair other remedies. Additionally, one or more  
8 individuals who are aggrieved by violation of any provision of  
9 Sections 165.1 through 165.11 of this title shall be entitled to  
10 bring an action in his or their own name to enforce the provisions  
11 of such sections.

12 SECTION 4. AMENDATORY 28 O.S. 2001, Section 152, as last  
13 amended by Section 2, Chapter 247, O.S.L. 2007 (28 O.S. Supp. 2009,  
14 Section 152), is amended to read as follows:

15 Section 152. A. In any civil case filed in a district court,  
16 the court clerk shall collect, at the time of filing, the following  
17 flat fees, none of which shall ever be refundable, and which shall  
18 be the only charge for court costs, except as is otherwise  
19 specifically provided for by law:

- 20 1. Actions for divorce, alimony without  
21 divorce, separate maintenance, custody or  
22 support..... \$140.00

1	2.	Any ancillary proceeding to modify or	
2		vacate a divorce decree providing for	
3		custody or support.....	\$40.00
4	3.	Probate and guardianship.....	\$132.00
5	4.	Annual guardianship report.....	\$30.00
6	5.	Any proceeding for sale or lease of real or	
7		personal property or mineral interest in	
8		probate or guardianship.....	\$40.00
9	6.	Any proceeding to revoke the probate of a	
10		will.....	\$40.00
11	7.	Judicial determination of death.....	\$55.00
12	8.	Adoption.....	\$102.00
13	9.	Civil actions for an amount of Ten Thousand	
14		Dollars (\$10,000.00) or less and	
15		condemnation.....	\$147.00
16	10.	Civil actions for an amount of Ten	
17		Thousand One Dollars (\$10,001.00) or more .....	\$160.00
18	11.	Garnishment.....	\$20.00
19	12.	Continuing wage garnishment.....	\$60.00
20	13.	Any other proceeding after judgment.....	\$30.00
21	14.	All others, including but not limited to	
22		actions for forcible entry and detainer,	
23		judgments from all other courts, including	
24		the Workers' Compensation Court.....	\$82.00



1 15. Notice of renewal of judgment.....\$20.00

2 B. In addition to the amounts collected pursuant to paragraphs  
3 1, 3, 7, 8, 9, 10 and 14 of subsection A of this section, the sum of  
4 Six Dollars (\$6.00) shall be assessed and credited to the Law  
5 Library Fund.

6 C. In addition to the amounts collected pursuant to subsections  
7 A and B of this section, the sum of Twenty-five Dollars (\$25.00)  
8 shall be assessed and credited to the Oklahoma Court Information  
9 System Revolving Fund created pursuant to Section 1315 of Title 20  
10 of the Oklahoma Statutes.

11 D. Of the amounts collected pursuant to paragraph 8 of  
12 subsection A of this section, the sum of Twenty Dollars (\$20.00)  
13 shall be deposited to the credit of the Voluntary Registry and  
14 Confidential Intermediary program and the Mutual Consent Voluntary  
15 Registry established pursuant to the Oklahoma Adoption Code.

16 E. Of the amounts collected pursuant to subsection A of this  
17 section, the sum of Ten Dollars (\$10.00) shall be deposited to the  
18 credit of the Child Abuse Multidisciplinary Account.

19 F. In addition to the amounts collected pursuant to subsections  
20 A and B of this section, the sum of Three Dollars (\$3.00) shall be  
21 assessed and credited to the Office of the Attorney General Victim  
22 Services Unit.

23 G. In any case in which a litigant claims to have a just cause  
24 of action and that, by reason of poverty, the litigant is unable to

1 pay the fees and costs provided for in this section and is  
2 financially unable to employ counsel, upon the filing of an  
3 affidavit in forma pauperis executed before any officer authorized  
4 by law to administer oaths to that effect and upon satisfactory  
5 showing to the court that the litigant has no means and is,  
6 therefore, unable to pay the applicable fees and costs and to employ  
7 counsel, no fees or costs shall be required. The opposing party or  
8 parties may file with the court clerk of the court having  
9 jurisdiction of the cause an affidavit similarly executed  
10 contradicting the allegation of poverty. In all such cases, the  
11 court shall promptly set for hearing the determination of  
12 eligibility to litigate without payment of fees or costs. Until a  
13 final order is entered determining that the affiant is ineligible,  
14 the clerk shall permit the affiant to litigate without payment of  
15 fees or costs. Any litigant executing a false affidavit or counter  
16 affidavit pursuant to the provisions of this section shall be guilty  
17 of perjury.

18 H. Payments to the court clerk for fees and costs assessed  
19 pursuant to this section may be made by a nationally recognized  
20 credit or debit card or other electronic payment method as provided  
21 in paragraph 1 of subsection B of Section 151 of this title.

22 I. No fee shall be required of the Oklahoma Department of  
23 Labor. No fee shall be required from a judgment creditor filing a  
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1 judgment of the Oklahoma Department of Labor, provided such judgment  
2 does not exceed Two Thousand Five Hundred Dollars (\$2,500.00).

3 SECTION 5. AMENDATORY 28 O.S. 2001, Section 152.1, as  
4 last amended by Section 1, Chapter 195, O.S.L. 2006 (28 O.S. Supp.  
5 2009, Section 152.1), is amended to read as follows:

6 Section 152.1 A. In civil cases, the court clerk shall collect  
7 and deposit in the court fund the following charges in addition to  
8 the flat fee:

- 9 1. For posting notices and filing  
10 certificates required by statute.....\$30.00
  - 11 2. For the filing of any counterclaim or  
12 setoff pursuant to Section 1758 of  
13 Title 12 of the Oklahoma Statutes.....\$20.00
  - 14 3. For mailing by any type of mail writs,  
15 warrants, orders, process, command, or  
16 notice for each person.....\$10.00
  - 17 4. For the actual cost of all postage in  
18 each case in excess of .....\$10.00
  - 19 5. For serving or endeavoring to serve each  
20 writ, warrant, order, process,  
21 command, or notice for each person in  
22 one or more counties.....\$50.00
- 23 provided that if more than one person is  
24 served at the same address, one flat

1 fee of Fifty Dollars (\$50.00) may be  
2 charged

- 3 6. For sheriff's fees on court-ordered
- 4 sales of real or personal property.....\$75.00
- 5 7. When a jury is requested.....\$349.00
- 6 8. For issuing each summons for each person.....\$ 5.00
- 7 9. For services of a court reporter at each
- 8 trial held in the case.....\$20.00
- 9 10. For filing a motion for summary
- 10 judgment or summary disposition of
- 11 issue(s).....\$50.00

12 The fees prescribed in paragraphs 5 and 6 of this subsection  
13 shall be paid by the court clerk into the Sheriff's Service Fee  
14 Account, created pursuant to the provisions of Section 514.1 of  
15 Title 19 of the Oklahoma Statutes, of the sheriff in the county  
16 where service is made or attempted or where the sheriff's sale  
17 occurs. All other fees shall be deposited into the local court fund  
18 in the county where collected.

19 B. Of the amounts collected pursuant to the provisions of  
20 paragraphs 1, 2 and 7 of subsection A of this section, the sum of  
21 Ten Dollars (\$10.00) shall be deposited to the credit of the Child  
22 Abuse Multidisciplinary Account.

23 C. No fee shall be required of the Oklahoma Department of  
24 Labor. No fee shall be required from a judgment creditor filing a

1 judgment of the Oklahoma Department of Labor, provided such judgment  
2 does not exceed Two Thousand Five Hundred Dollars (\$2,500.00).

3 SECTION 6. AMENDATORY 21 O.S. 2001, Section 1541.1, is  
4 amended to read as follows:

5 Section 1541.1 Every person who, with intent to cheat and  
6 defraud, shall obtain or attempt to obtain from any person, firm or  
7 corporation any money, property, labor or valuable thing, of a value  
8 less than Five Hundred Dollars (\$500.00), by means or by use of any  
9 trick or deception, or false or fraudulent representation or  
10 statement or pretense, or by any other means or instruments or  
11 device commonly called the "confidence game", or by means or use of  
12 any false or bogus checks, or by any other written or printed or  
13 engraved instrument or spurious coin, shall be guilty of a  
14 misdemeanor and upon conviction thereof shall be punished by a fine  
15 not to exceed One Thousand Dollars (\$1,000.00), or by imprisonment  
16 in the county jail for not more than one (1) year, or by both such  
17 fine and imprisonment.

18 SECTION 7. AMENDATORY 21 O.S. 2001, Section 1541.4, as  
19 last amended by Section 1, Chapter 428, O.S.L. 2009 (21 O.S. Supp.  
20 2009, Section 1541.4), is amended to read as follows:

21 Section 1541.4 A. The term "false or bogus check or checks"  
22 shall include checks or orders, including those converted to  
23 electronic fund transfer, which are not honored on account of  
24 insufficient funds of the maker to pay same or because the check or

1 order was drawn on a closed account or on a nonexistent account when  
2 such checks or orders are given :

- 3 1. In exchange for money or property;
- 4 2. In exchange for any benefit or thing of value; ~~or~~
- 5 3. As a down payment for the purchase of any item of which the  
6 purchaser is taking immediate possession, as against the maker or  
7 drawer thereof; or
- 8 4. In exchange for labor.

9 B. The making, drawing, uttering, or delivering of a check,  
10 draft, or order, payment of which is refused by the drawee, shall be  
11 prima facie evidence of intent to defraud and the knowledge of  
12 insufficient funds in, or credit with, such bank or other  
13 depository; provided, such maker or drawer shall not have paid the  
14 drawee thereof the amount due thereon, together with the protest  
15 fees, within five (5) days from the date the same is presented for  
16 payment; and provided, further, that said check or order is  
17 presented for payment within thirty (30) days after same is  
18 delivered and accepted.

19 C. A check offered for the purchase of goods or livestock that  
20 is refused by a drawee shall not be considered to be an extension of  
21 credit by the seller of goods or livestock to the maker or drawer of  
22 the check.

23 SECTION 8. REPEALER 40 O.S. 2001, Sections 196.1,  
24 196.2, 196.2a, 196.3, 196.4, 196.5, 196.5b, 196.6, 196.7, 196.8,

1 196.9, 196.9a, 196.10, 196.10a, 196.11, 196.11a, 196.12, 196.13, and  
2 196.14, are hereby repealed.

3 SECTION 9. This act shall become effective July 1, 2010.

4 SECTION 10. It being immediately necessary for the preservation  
5 of the public peace, health and safety, an emergency is hereby  
6 declared to exist, by reason whereof this act shall take effect and  
7 be in full force from and after its passage and approval.

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