

LEGISLATIVE BILL 311

Approved by the Governor March 29, 1991

Introduced by Lindsay, 9

AN ACT relating to the Nebraska Wage Payment and Collection Act; to amend section 48-1231, Reissue Revised Statutes of Nebraska, 1943, and section 48-1229; Revised Statutes Supplement, 1990; to define a term; to change a provision relating to the recovery of attorney's fees as prescribed; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 48-1229, Revised Statutes Supplement, 1990, be amended to read as follows:

48-1229. As used in For purposes of the Nebraska Wage Payment and Collection Act, unless the context otherwise requires:

(1) Employer shall mean any individual, partnership, association, joint-stock company, trust, corporation, political subdivision, or personal representative of the estate of a deceased individual, or the receiver, trustee, or successor thereof, within or without the state, employing any person within the state as an employee, except that employer shall not be construed to include the state;

(2) Employee shall mean any individual permitted to work by an employer pursuant to an employment relationship or who has contracted to sell the goods of an employer and to be compensated by commission. Services performed by an individual for an employer shall be deemed to be employment, unless it is shown that (a) such individual has been and will continue to be free from control or direction over the performance of such services, both under his or her contract of service and in fact, (b) such service is either outside the usual course of business for which such service is performed or such service is performed outside of all the places of business of the enterprise for which such service is performed, and (c) such individual is customarily engaged in an independently established trade, occupation, profession, or business. This subdivision is not intended to be a codification of the common law and shall be considered complete as

written; and

(3) Fringe benefits shall include sick and vacation leave plans, disability income protection plans, retirement, pension, or profit-sharing plans, health and accident benefit plans, and any other employee benefit plans or benefit programs regardless of whether the employee participates in such plans or programs; and

(4) Wages shall mean compensation for labor or services rendered by an employee, including fringe benefits, when previously agreed to and conditions stipulated have been met by the employee, whether the amount is determined on a time, task, fee, commission, or other basis. Wages shall include commissions on all orders delivered and all orders on file with the employer at the time of termination of employment less any orders returned or canceled at the time suit is filed.

Sec. 2. That section 48-1231, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-1231. An employee having a claim for wages which are not paid within thirty days of the regular payday designated or agreed upon may institute suit for such unpaid wages in the proper court. If an employee ~~shall establish~~ establishes a claim and ~~secure~~ secures judgment on the claim, such employee shall be entitled to recover (1) the full amount of the judgment and all costs of such suit; and (2) if such employee has employed an attorney in the case, an amount for ~~attorney~~ attorney's fees assessed by the court, which fees shall not be less than twenty-five percent of the unpaid wages. If the cause is taken to an appellate court and ~~the plaintiff shall recover~~ recovers a judgment, the appellate court shall tax as costs in the action, to be paid to the plaintiff, an additional amount for ~~attorney~~ attorney's fees in such appellate court, which fees shall not be less than twenty-five percent of the unpaid wages. If the employee ~~shall fail~~ fails to recover a judgment in excess of the amount that may have been tendered within thirty days of the regular payday by an employer, ~~then~~ such employee shall not recover the ~~attorney~~ attorney's fees provided by this section. If the court finds that no reasonable dispute existed as to the fact that wages were owed or as to the amount of such wages, the court may order the employee to and shall pay the employer's attorney attorney's fees and costs of the action as assessed by the court.

Sec. 3. That original section 48-1231,

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Reissue Revised Statutes of Nebraska, 1943, and section 48-1229, Revised Statutes Supplement, 1990, are repealed.