

HB 1125

2013

1 A bill to be entitled
2 An act relating to employers and employees; amending
3 s. 34.01, F.S.; providing jurisdiction of county
4 courts over wage theft civil actions; creating s.
5 448.115, F.S.; providing a definition for the term
6 "wage theft"; creating a civil cause of action for
7 wage theft; providing the procedure for filing of a
8 civil action for wage theft; providing jurisdiction;
9 requiring a claimant to notify the employer of the
10 employee's intention to initiate a civil action;
11 allotting the employer a specific time to resolve the
12 action; providing a statute of limitations; requiring
13 a claimant to prove wage theft by a preponderance of
14 the evidence; prohibiting certain damages; authorizing
15 the Attorney General to bring a civil action for wage
16 theft and seek injunctive relief; providing a civil
17 penalty; authorizing a county, municipality, or
18 political subdivision to establish a process by which
19 a claim may be filed; prohibiting a local government
20 from adopting or maintaining in effect a law,
21 ordinance, or rule for the purpose of addressing
22 unpaid wage claims; prohibiting the preemption of
23 certain local ordinances governing wage theft;
24 providing that any regulation, ordinance, or other
25 provision for recovery of unpaid wages by counties,
26 municipalities, or political subdivisions is
27 prohibited and preempted to the state; providing a
28 directive to the Division of Law Revision and

29 Information; providing an effective date.

30

31 Be It Enacted by the Legislature of the State of Florida:

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33 Section 1. Subsection (1) of section 34.01, Florida
 34 Statutes, is amended to read:

35 34.01 Jurisdiction of county court.—

36 (1) County courts shall have original jurisdiction:

37 (a) In all misdemeanor cases not cognizable by the circuit
 38 courts.~~;~~

39 (b) Of all violations of municipal and county ordinances.~~;~~

40 (c) Of all actions at law in which the matter in
 41 controversy does not exceed the sum of \$15,000, exclusive of
 42 interest, costs, and attorney's fees, except those within the
 43 exclusive jurisdiction of the circuit courts.~~;~~ and

44 (d) Of disputes occurring in the homeowners' associations
 45 as described in s. 720.311(2)(a), which shall be concurrent with
 46 jurisdiction of the circuit courts.

47 (e) Of actions for the collection of compensation under s.
 48 448.115, notwithstanding the amount in controversy prescribed in
 49 paragraph (c).

50 Section 2. Section 448.115, Florida Statutes, is created
 51 to read:

52 448.115 Civil action for wage theft; notice; civil
 53 penalty; preemption.—

54 (1)(a) As used in this section, the term "wage theft"
 55 means an illegal or improper underpayment or nonpayment of an
 56 individual employee's wage, salary, commission, or other similar

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57 form of compensation within a reasonable time from the date on
58 which the employee performed the work to be compensated.

59 (b) A wage theft occurs when an employer fails to pay a
60 portion of wages, salary, commissions, or other similar form of
61 compensation due to an employee within a reasonable time from
62 the date on which the employee performed the work, according to
63 the already applicable rate and the pay schedule of the employer
64 established by policy or practice. In the absence of an
65 established pay schedule, a reasonable time from the date on
66 which the employee performed the work is 2 weeks.

67 (2) (a) If an employer commits wage theft as defined in
68 paragraph (1) (a), an aggrieved employee may initiate a civil
69 action as provided in this section.

70 (b) County courts shall have original and exclusive
71 jurisdiction in all actions involving wage theft, as provided in
72 s. 34.01.

73 (c) The action shall:

- 74 1. Be brought in the county court in the county where the
75 employee performed the work;
- 76 2. Not include a right to a jury trial; and
- 77 3. Be governed by the Florida Small Claims Rules.

78 (3) (a) Before bringing an action, the claimant must notify
79 the employer who is alleged to have engaged in wage theft of an
80 intent to initiate a civil action in writing.

81 (b) The notice must identify the amount that the claimant
82 alleges is owed, the actual or estimated work dates and hours
83 for which compensation is sought, and the total amount of
84 compensation unpaid through the date of the notice.

85 (c) The employer has 15 days after the date of service of
86 the notice to pay the total amount of unpaid compensation or
87 otherwise resolve the action to the satisfaction of the
88 claimant.

89 (4) The action must be filed within 1 year after the last
90 date that the alleged unpaid work was performed by the employee.

91 (5) The claimant must prove wage theft by a preponderance
92 of the evidence. A prevailing claimant is entitled to damages
93 limited to the actual compensation due and owing.

94 (a) The court may only award economic damages expressly
95 authorized in this subsection.

96 (b) The court may not award noneconomic or punitive
97 damages or attorney fees or costs to a prevailing claimant,
98 notwithstanding s. 448.08.

99 (6) The Attorney General may bring a civil action against
100 an employer for wage theft. The Attorney General may seek
101 injunctive relief. In addition to injunctive relief, or in lieu
102 of injunctive relief, for any employer found to have willfully
103 engaged in wage theft, the Attorney General may seek to impose a
104 civil penalty not to exceed \$1,000 per violation, payable to the
105 state. The clerk of court shall remit the penalty collected
106 under this subsection to the Department of Revenue for deposit
107 into the General Revenue Fund.

108 (7) (a) A county, municipality, or political subdivision
109 may establish an administrative, nonjudicial process under which
110 an assertion of unpaid compensation may be submitted by, or on
111 behalf of, an employee in order to assist in the collection of
112 compensation owed to the employee. Any such process, at a

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113 minimum, shall afford the parties involved an opportunity to
114 negotiate a resolution regarding the compensation in question.
115 The county, municipality, or political subdivision may, as part
116 of the process, pay the filing fee under s. 34.041 on behalf of
117 the employee or assist the employee in completing an application
118 for a determination of civil indigent status under s. 57.082.
119 The process may not adjudicate a compensation dispute between an
120 employee and an employer nor award damages to the employee.

121 (b) A county, municipality, or political subdivision may
122 not adopt or maintain in effect any law, ordinance, or rule that
123 creates requirements or regulations for the purpose of
124 addressing unpaid compensation claims other than to establish
125 the administrative, nonjudicial process provided for in this
126 subsection.

127 (c) Notwithstanding paragraph (b), a local ordinance
128 governing wage theft enacted before January 1, 2011, is not
129 preempted by this section. However, any local ordinance
130 governing wage theft enacted before January 1, 2011, may not
131 apply to an employer whose annual gross volume of sales or
132 business transacted is more than \$500,000, exclusive of sales
133 tax collected or excise taxes paid.

134 (d) Any other regulation, ordinance, or provision for the
135 recovery of unpaid compensation by a county, municipality, or
136 political subdivision is expressly prohibited and is preempted
137 to the state.

138 Section 3. The Division of Law Revision and Information is
139 directed to replace the phrase "the effective date of this act"
140 in s. 448.116, Florida Statutes, with the date this act becomes

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141 | a law.

142 | Section 4. This act shall take effect upon becoming a law.