

1 **H. B. 4615**

2
3 (By Delegates E. Nelson, McCuskey, Storch,
4 Hunt, Hartman, Skaff and Ellem)
5

6 [Introduced February 17, 2014; referred to the
7 Committee on Industry and Labor then the Judiciary.]
8
9

10 A BILL to amend and reenact §21-5-1, §21-5-3 and §21-5-4 of the
11 Code of West Virginia, 1931, as amended, all relating
12 generally to wage payment and collection; amending
13 definitions; the payment of wages by employers other than
14 railroads; assignments of wages; cash orders, and employees
15 separated from payroll before paydays; and consolidating all
16 of the current provisions concerning payment to departing
17 employees into a single requirement that departing employees
18 be paid their wages by the next regular payday.

19 *Be it enacted by the Legislature of West Virginia:*

20 That §21-5-1, §21-5-3 and §21-5-4 of the Code of West
21 Virginia, 1931, as amended, be amended and reenacted, all to read
22 as follows:

23 **ARTICLE 5. WAGE PAYMENT AND COLLECTION.**

24 **§21-5-1. Definitions.**

25 As used in this article:

1 (a) The term "firm" includes any partnership, association,
2 joint-stock company, trust, division of a corporation, the
3 administrator or executor of the estate of a deceased individual,
4 or the receiver, trustee, or successor of any of the same, or
5 officer thereof, employing any person.

6 (b) The term "employee" or "employees" includes any person
7 suffered or permitted to work by a person, firm or corporation.

8 (c) The term "wages" means compensation for labor or services
9 rendered by an employee, whether the amount is determined on a
10 time, task, piece, commission or other basis of calculation. As
11 used in sections four, five, eight-a, ten and twelve of this
12 article, the term "wages" shall also include then accrued fringe
13 benefits capable of calculation and payable directly to an
14 employee: *Provided*, That nothing herein contained ~~shall~~ may
15 require fringe benefits to be calculated contrary to any agreement
16 between an employer and his or her employees which does not
17 contradict the provisions of this article.

18 (d) The term "commissioner" means Commissioner of Labor or his
19 or her designated representative.

20 (e) The term "railroad company" includes any firm or
21 corporation engaged primarily in the business of transportation by
22 rail.

23 (f) The term "special agreement" means an arrangement filed
24 with and approved by the commissioner whereby a person, firm or

1 corporation is permitted upon a compelling showing of good cause to
2 establish regular paydays less frequently than once in every two
3 weeks: *Provided*, That in no event ~~shall~~ may the employee be paid
4 in full less frequently than once each calendar month on a
5 regularly established schedule.

6 (g) The term "deductions" includes amounts required by law to
7 be withheld, and amounts authorized for union or club dues, pension
8 plans, payroll savings plans, credit unions, charities and
9 hospitalization and medical insurance, and other voluntary employee
10 purchases of goods or services made at the employer's place of
11 business.

12 (h) The term "officer" ~~shall~~ includes officers or agents in
13 the management of a corporation or firm, who knowingly permit the
14 corporation or firm to violate the provisions of this article.

15 (i) The term "wages due" ~~shall~~ includes at least all wages
16 earned up to and including the ~~fifth~~ fifteenth day immediately
17 preceding the regular payday.

18 (j) The term "construction" means the furnishing of work in
19 the fulfillment of a contract for the construction, alteration,
20 decoration, painting or improvement of a new or existing building,
21 structure, roadway or pipeline, or any part thereof, or for the
22 alteration, improvement or development of real property: *Provided*,
23 That construction performed for the owner or lessee of a single
24 family dwelling or a family farming enterprise is excluded.

1 (k) The term "minerals" means clay, coal, flagstone, gravel,
2 limestone, manganese, sand, sandstone, shale, iron ore and any
3 other metallurgical ore.

4 (l) The term "fringe benefits" means any benefit provided an
5 employee or group of employees by an employer, or which is required
6 by law, and includes regular vacation, graduated vacation, floating
7 vacation, holidays, sick leave, personal leave, production
8 incentive bonuses, sickness and accident benefits and benefits
9 relating to medical and pension coverage.

10 (m) The term "employer" means any person, firm or corporation
11 employing any employee.

12 (n) The term "doing business in this state" means having
13 employees actively engaged in the intended principal activity of
14 the person, firm or corporation in West Virginia.

15 **§21-5-3. Payment of wages by employers other than railroads;**
16 **assignments of wages.**

17 (a) Every person, firm or corporation doing business in this
18 state, except railroad companies as provided in section one of this
19 article, shall settle with its employees at least once in every two
20 weeks, unless otherwise provided by special agreement, and pay them
21 the wages due, which shall include at least all wages earned up to
22 and including the fifteenth day immediately preceding the regular
23 payday, less authorized deductions and authorized wage assignments,
24 for their work or services.

1 (b) Payment required in subsection (a) of this section shall
2 be made:

3 (1) In lawful money of the United States;

4 (2) By cash order as described and required in section four of
5 this article;

6 (3) By deposit or electronic transfer of immediately available
7 funds into an employee's payroll card account in a federally
8 insured depository institution. The term "payroll card account"
9 means an account in a federally insured depository institution that
10 is directly or indirectly established through an employer and to
11 which electronic fund transfers of the employee's wages, salary,
12 commissions or other compensation are made on a recurring basis,
13 whether the account is operated or managed by the employer, a
14 third-party payroll processor, a depository institution or another
15 person. "Payroll card" means a card, code or combination thereof
16 or other means of access to an employee's payroll card account, by
17 which the employee may initiate electronic fund transfers or use a
18 payroll card to make purchases or payments. Payment of employee
19 compensation by means of a payroll card must be agreed upon in
20 writing by both the person, firm or corporation paying the
21 compensation and the person being compensated.

22 (4) By any method of depositing immediately available funds in
23 an employee's demand or time account in a bank, credit union or
24 savings and loan institution that may be agreed upon in writing

1 between the employee and such person, firm or corporation, which
2 agreement shall specifically identify the employee, the financial
3 institution, the type of account and the account number: *Provided,*
4 That nothing herein contained ~~shall~~ may be construed in a manner to
5 require any person, firm or corporation to pay employees by
6 depositing funds in a financial institution.

7 (c) If, at any time of payment, any employee ~~shall be~~ is
8 absent from his or her regular place of labor and ~~shall~~ does not
9 receive his or her wages through a duly authorized representative,
10 he or she ~~shall be~~ is entitled to payment at any time thereafter
11 upon demand upon the proper paymaster at the place where his or her
12 wages are usually paid and where the next pay is due.

13 (d) Nothing herein contained ~~shall~~ affects the right of an
14 employee to assign part of his or her claim against his or her
15 employer except as in subsection (e) of this section.

16 (e) No assignment of or order for future wages ~~shall be~~ is
17 valid for a period exceeding one year from the date of the
18 assignment or order. An assignment or order shall be acknowledged
19 by the party making the same before a notary public or other
20 officer authorized to take acknowledgments, and any order or
21 assignment shall specify thereon the total amount due and
22 collectible by virtue of the same and three fourths of the
23 periodical earnings or wages of the assignor ~~shall~~ is at all times
24 ~~be~~ exempt from such assignment or order and no assignment or order

1 ~~shall be~~ is valid which does not so state upon its face: *Provided,*
 2 That ~~no such~~ an order or assignment ~~shall be~~ is not valid unless
 3 the written acceptance of the employer of the assignor to the
 4 making thereof, is endorsed thereon: *Provided, however,* That
 5 nothing herein contained ~~shall~~ may be construed as affecting the
 6 right of employer and employees to agree between themselves as to
 7 deductions to be made from the payroll of employees.

8 **§21-5-4. Cash orders; employees separated from payroll before**
 9 **paydays.**

10 (a) In lieu of lawful money of the United States, any person,
 11 firm or corporation may compensate employees for services by cash
 12 order which may include checks or money orders on banks convenient
 13 to the place of employment where suitable arrangements have been
 14 made for the cashing of the checks by employees for the full amount
 15 of wages.

16 (b) Whenever a person, firm or corporation discharges an
 17 employee, ~~the person, firm or corporation shall pay the employee's~~
 18 ~~wages in full no later than the next regular payday or four~~
 19 ~~business days, whichever comes first~~ or whenever an employee quits
 20 or resigns, is suspended as a result of a labor dispute, or for any
 21 reason whatsoever is laid off, the person, firm or corporation
 22 shall pay the employee's wages in full no later than the next
 23 regular payday on which the wages would otherwise be due and
 24 payable. Payment shall be made through the regular pay channels

1 ~~or, if requested by the employee, by first class mail or overnight~~
2 ~~delivery to the employee's last known address. The payment shall~~
3 ~~be considered to have been made on the date that the employee's~~
4 ~~wages are mailed or sent for overnight delivery to the employee or~~
5 ~~made available to the employee through the regular pay channels,~~
6 ~~whichever is earlier.~~ For purposes of this section, "business day"
7 ~~means any day other than Saturday, Sunday or any legal holiday as~~
8 ~~set forth in section one, article two, chapter two of this code.~~

9 ~~(c) Whenever an employee quits or resigns, the person, firm or~~
10 ~~corporation shall pay the employee's wages in full no later than~~
11 ~~the next regular payday. Payment shall be made through the regular~~
12 ~~pay channels or, if requested by the employee, by mail. However,~~
13 ~~if the employee gives at least one pay period's written notice of~~
14 ~~intention to quit, the person, firm or corporation shall pay all~~
15 ~~wages earned by the employee at the time of quitting.~~

16 ~~(d) When work of any employee is suspended as a result of a~~
17 ~~labor dispute, or when an employee for any reason whatsoever is~~
18 ~~laid off, the person, firm or corporation shall pay in full to the~~
19 ~~employee not later than the next regular payday, either through the~~
20 ~~regular pay channels or by mail if requested by the employee, wages~~
21 ~~earned at the time of suspension or layoff.~~

22 (c) If a person, firm or corporation fails to pay an employee
23 wages as required under this section, the person, firm or
24 corporation, in addition to the amount which was unpaid when due,

1 is liable to the employee for three times that unpaid amount as
2 liquidated damages. Every employee ~~shall have~~ has a lien and all
3 other rights and remedies for the protection and enforcement of his
4 or her salary or wages, as he or she would have been entitled to
5 had he or she rendered service therefor in the manner as last
6 employed; except that, for the purpose of liquidated damages, the
7 failure ~~shall~~ may not be ~~deemed~~ considered to continue after the
8 date of the filing of a petition in bankruptcy with respect to the
9 employer if he or she is adjudicated bankrupt upon the petition.

NOTE: The purpose of this bill is to amend certain definitions to allow payroll deduction for voluntary purchases made by the employee at the employer's place of business; to lengthen the 5 day pay lag period; to provide clarity to employers that the permissible pay lag is no more than 15 days; to consolidate all of the current provisions concerning payment to departing employees into a single requirement that departing employees be paid their wages by the next regular payday when those wages would otherwise be due and to permit employers the option of sending a departing employee's final paycheck by mail or overnight delivery to the employee's last known address.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.