

COMMITTEE SUBSTITUTE

FOR

## **Senate Bill No. 12**

(By Senators Carmichael, Boley, Ferns, Gaunch, D. Hall, M. Hall,  
Karnes, Mullins, Sypolt, Nohe, Trump, Blair and Cole  
(Mr. President))

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[Originating in the Committee on the Judiciary;  
reported January 20, 2015.]

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A BILL to amend and reenact §21-5-4 of the Code of West Virginia, 1931, as amended, relating to payment of wages by employers and when final wages are required to be paid; requiring payment of wages to be by next regular payday; providing exception; providing that bonuses and fringe benefits are not covered; reducing amount of liquidated damages available for violation of this section; providing instance when liquidated damages are not available; clarifying that section does not address whether overtime pay is due; authorizing payment by

mail if requested by employee; and establishing date paid if payment mailed pursuant to employee request.

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

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

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

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

1 (a) In lieu of lawful money of the United States, any  
2 person, firm or corporation may compensate employees for  
3 services by cash order which may include checks or money  
4 orders on banks convenient to the place of employment  
5 where suitable arrangements have been made for the cashing  
6 of the checks by employees for the full amount of wages.

7 (b) Whenever a person, firm or corporation discharges an  
8 employee, or whenever an employee quits or resigns from  
9 employment, the person, firm or corporation shall pay the  
10 employee's wages ~~in full no later than the next regular~~  
11 ~~payday or four business days, whichever comes first.~~

12 ~~Payment shall be made through the regular pay channels or,~~  
13 ~~if requested by the employee, by mail: due for work that the~~  
14 ~~employee performed prior to the separation of employment~~  
15 ~~on or before the next regular payday on which the wages~~  
16 ~~would otherwise be due and payable. However, bonuses and~~  
17 ~~other fringe benefits of employment, as defined in section~~  
18 ~~one of this article, are not considered part of the~~  
19 ~~compensation to be paid at the times specified in this section.~~

20 For purposes of this section, “business day” means any day  
21 other than Saturday, Sunday or any legal holiday as set forth  
22 in section one, article two, chapter two of this code.

23 (c) ~~Whenever an employee quits or resigns, the person,~~  
24 ~~firm or corporation shall pay the employee’s wages in full no~~  
25 ~~later than the next regular payday. Payment shall be made~~  
26 ~~through the regular pay channels or, if requested by the~~  
27 ~~employee, by mail. However, if the employee gives at least~~  
28 ~~one pay period’s written notice of intention to quit, the~~  
29 ~~person, firm or corporation shall pay all wages earned by the~~  
30 ~~employee at the time of quitting. Payment under this section~~

31 may be made in person in any manner permissible under  
32 section three of this article, through the regular pay channels  
33 or, if requested by the employee, by mail. If the employee  
34 requests that payment under this section be made by mail,  
35 that payment shall be considered to have been made on the  
36 date the mailed payment is postmarked.

37 (d) When work of any employee is suspended as a result  
38 of a labor dispute, or when an employee for any reason  
39 whatsoever is laid off, the person, firm or corporation shall  
40 pay in full to the employee not later than the next regular  
41 payday, either through the regular pay channels or by mail if  
42 requested by the employee, wages earned at the time of  
43 suspension or layoff.

44 (e) If a person, firm or corporation fails to pay an  
45 employee wages as required under this section, the person,  
46 firm or corporation, in addition to the amount which was  
47 unpaid when due, is liable to the employee for ~~three~~ two  
48 times that unpaid amount as liquidated damages. This section  
49 regulates the timing of wage payments upon separation from

50 employment and not whether overtime pay is due.  
51 Liquidated damages that can be awarded under this section  
52 are not available to employees claiming they were  
53 misclassified as exempt from overtime under state and  
54 federal wage and hour laws. Every employee shall have a lien  
55 and all other rights and remedies for the protection and  
56 enforcement of his or her salary or wages, as he or she would  
57 have been entitled to had he or she rendered service therefor  
58 in the manner as last employed; except that, for the purpose  
59 of liquidated damages, the failure shall not be deemed to  
60 continue after the date of the filing of a petition in bankruptcy  
61 with respect to the employer if he or she is adjudicated  
62 bankrupt upon the petition.

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