

# **WEST VIRGINIA LEGISLATURE**

**2018 REGULAR SESSION**

**Committee Substitute**

**for**

**House Bill 2546**

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[Introduced February 20, 2017; Referred to the  
Committee on Industry and Labor then the Judiciary.]



1 A BILL to amend and reenact §21-5-4 of the Code of West Virginia, 1931, as amended, all relating  
2 to the Wage Payment and Collection Act; relating to allowing actual cash value of  
3 employer provided property to be deducted from an employee's final paycheck if the  
4 property is not returned; setting forth conditions upon which an employer may withhold,  
5 deduct, or divert the actual cash value of employer provided property that has not been  
6 timely returned; requiring written agreements before withholding or deductions for the  
7 actual cash value of employer provided property may be made; specifying certain contents  
8 of such written agreements; authorizing withholding, deduction, or diversion of actual cash  
9 value of employer provided property with consent of employee; requiring employer to  
10 provide notice of intent to withhold, deduct, or divert actual cash value of employer  
11 provided property; specifying contents of that notice; requiring employer to relinquish  
12 withheld wages if the employee provides the employer provided property by the deadline  
13 contained in the notice; providing exceptions; providing option to employee to object to  
14 actual cash value of employer provided property to be withheld, deducted, or diverted;  
15 providing that employer place contested amounts in interest bearing escrow account;  
16 requiring employee to file civil action to recoup contested amounts within three months or  
17 contested amount in escrow account reverts to employer; providing that new subsection  
18 does not abolish or limit any other remedies available to employers under law; exempting  
19 collective bargaining agreements; and defining terms.

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

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

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

1 (a) In lieu of lawful money of the United States, any person, firm, or corporation may  
2 compensate employees for services by cash order which may include checks, direct deposits, or  
3 money orders on banks convenient to the place of employment where suitable arrangements

4 have been made for the cashing of the checks by employees or deposit of funds for employees  
5 for the full amount of wages.

6 (b) Whenever a person, firm, or corporation discharges an employee, or whenever an  
7 employee quits or resigns from employment, the person, firm, or corporation shall pay the  
8 employee's wages due for work that the employee performed prior to the separation of  
9 employment on or before the next regular payday on which the wages would otherwise be due  
10 and payable: *Provided*, That fringe benefits, as defined in section one of this article, that are  
11 provided an employee pursuant to an agreement between the employee and employer and that  
12 are due, but pursuant to the terms of the agreement, are to be paid at a future date or upon  
13 additional conditions which are ascertainable are not subject to this subsection and are not  
14 payable on or before the next regular payday, but shall be paid according to the terms of the  
15 agreement. For purposes of this section, "business day" means any day other than Saturday,  
16 Sunday, or any legal holiday as set forth in section one, article two, chapter two of this code.

17 (c) Payment under this section may be made in person in any manner permissible under  
18 section three of this article, through the regular pay channels or, if requested by the employee, by  
19 mail. If the employee requests that payment under this section be made by mail, that payment  
20 shall be considered to have been made on the date the mailed payment is postmarked.

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

25 (e) If a person, firm, or corporation fails to pay an employee wages as required under this  
26 section, the person, firm, or corporation, in addition to the amount which was unpaid when due,  
27 is liable to the employee for two times that unpaid amount as liquidated damages. This section  
28 regulates the timing of wage payments upon separation from employment and not whether  
29 overtime pay is due. Liquidated damages that can be awarded under this section are not available

30 to employees claiming they were misclassified as exempt from overtime under state and federal  
31 wage and hour laws. Every employee shall have a lien and all other rights and remedies for the  
32 protection and enforcement of his or her salary or wages, as he or she would have been entitled  
33 to had he or she rendered service therefor in the manner as last employed; except that, for the  
34 purpose of liquidated damages, the failure shall not be deemed to continue after the date of the  
35 filing of a petition in bankruptcy with respect to the employer if he or she is adjudicated bankrupt  
36 upon the petition.

37 (f)(1) Notwithstanding any provision in this section to the contrary, if at the time of  
38 discharge or resignation, an employee fails to return employer provided property, as set forth by  
39 the parties under paragraph (C) of this subsection, the employer may withhold, deduct, or divert  
40 an employee's final wages, in an amount not to exceed the replacement cost of the employer  
41 provided property that was not returned as set forth under paragraph (C) of this subsection, to  
42 recover the replacement cost of the employer provided property, subject to the following:

43 (A) The employer provided property had been provided to the employee in the course of,  
44 and for use in, the employer's business;

45 (B) The employer provided property has a value in excess of \$100;

46 (C) The employee had signed a written agreement with the employer contemporaneous  
47 with the obtaining of the employer provided property, or signed and ratified an agreement if  
48 property had been provided prior to the effective date of this provision; and such agreement  
49 contained, at a minimum, the following information:

50 (i) Specific itemization of the employer provided property, with a specified replacement  
51 cost;

52 (ii) Clear statement that such items are to be returned immediately upon discharge or  
53 resignation; and

54 (iii) Clear statement, coupled with the employee's acknowledgement and agreement, that  
55 should the employee fail to timely return the specified items, the replacement cost of such items  
56 may be recovered by the employer from the employee's final wages;

57 (D) The employer shall notify the employee in writing at the time of discharge or resignation  
58 by personal service, or as soon thereafter as practicable by personal service or via certified mail  
59 with return receipt requested, as to the replacement cost of the items and make a demand for  
60 return of such employer provided property within a certain date, not to exceed ten business days  
61 of the notification; and

62 (E) The employer shall relinquish the withheld, deducted, or diverted wages to the  
63 employee if the employee returns the employer's property, equipment, supplies, and uniforms in  
64 a condition suitable for the age and usage of the items within the deadline specified in paragraph  
65 (D) of this subsection. *Provided*, That uniforms returned to the employer within three years of their  
66 issuance shall be deemed acceptable in their current condition at the time of separation from  
67 employment for purposes of this section. *Provided further*, replacement tools are deemed to be  
68 the property of the employee and are not subject to the provisions of this section.

69 (2) Nothing herein precludes an employee from voluntarily consenting in writing to an  
70 employer's withholding, deduction, or diversion of a certain amount from the employee's final  
71 wages in satisfaction of subsection (1) of this section.

72 (3) If an employee objects to the replacement cost amount to be deducted by an employer,  
73 and provides such written objection within the deadline specified in paragraph (D), subsection (1)  
74 of this subsection, then the employer shall place the controverted amount in an interest bearing  
75 escrow account: *Provided*, That if a civil action or equitable relief is not brought by the employee  
76 for the claimed amount within three months, the employee shall forfeit the amount in escrow and  
77 such money shall revert to the employer.

78 (4) Nothing in this subsection is intended, nor shall it be construed, to abolish or limit any  
79 other remedies available to an employer to recover employer provided property, damages related

80 to employer provided property or any other damages or relief, equitable or otherwise, available  
81 under any applicable law.

82 (5) Notwithstanding any provision in this section to the contrary, this provision shall not  
83 apply to employer-employee business relationships that are subject to, and governed by,  
84 collective bargaining agreements.

85 (6) For purposes of this section the following terms mean:

86 (A) The term “employer provided property” means all property provided by an employer to  
87 an employee for use in the employer’s business, including but not limited to, equipment, phone,  
88 computer, supplies, or uniforms.

89 (B) The term “replacement cost” means actual cost paid by an employer for employer  
90 provided property, or for the same or similar property, if the original employer provided property  
91 no longer exists. In calculating the “replacement cost”, the cost shall include any vendor discounts  
92 provided to the employer for such property.

93 (C) The term “replacement tools” means equipment, other than uniforms, provided by the  
94 employer to the employee for use in the course of the employer’s business and to replace  
95 equipment provided by the employee that is lost.

NOTE: The purpose of this bill is to allow uniform costs to be deducted from an employee’s final paycheck if the uniform is not returned.

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