

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

Senate Bill 7

BY SENATORS TRUMP, CLINE, AND TAKUBO

[Introduced January 10, 2018; Referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §21-5-12 of the Code of West Virginia, 1931, as amended, relating
2 to wage payment and collection; requiring an employee to provide written notice to his or
3 her employer of any alleged nonpayment of wages; providing the employer with an
4 opportunity to cure the alleged violation; providing a tolling of the statute of limitations;
5 providing judicial remedies; and making the written notice a jurisdictional requirement.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

§21-5-12. Employees' remedies.

1 (a)(1) No action may be brought pursuant to this article until the person has informed his
2 or her employer in writing and by certified mail, return receipt requested, to the employer's
3 registered agent identified by the employer at the office of the West Virginia Secretary of State or,
4 if not registered with the West Virginia Secretary of State, then to the employer's principal place
5 of business, of the alleged violation and the factual basis for the violation and provide the employer
6 twenty days from receipt by the agent or at the principal place of business referenced above of
7 the notice of violation to make a cure offer, which shall be provided to the person's counsel or, if
8 unrepresented, to the person by certified mail, return receipt requested: *Provided*, That the person
9 has ten days from receipt of the cure offer to accept the cure offer or it is deemed refused and
10 withdrawn.

11 (2) If a cure offer is accepted, the employer collector has twenty days to remit the wages
12 as specified in the cure offer.

13 (3) Any applicable statute of limitations is tolled for the twenty-day period set forth in
14 subdivision (1) of this subsection or for the period the effectuation of the cure offer is being
15 performed, whichever is longer.

16 (4) Nothing in this section prevents a person that has accepted a cure offer from bringing
17 a civil action against an employer for failing to timely effect the cure offer.

18 (5) The written notice required under subdivision (1) of this subsection is a jurisdictional

19 prerequisite to any action brought under this article.

20 ~~(a) Any~~ (b) Subject to the requirements of subsection (a) of this section, any person whose
21 wages have not been paid in accord with this article, or the commissioner or his or her designated
22 representative, upon the request of such person, may bring any legal action necessary to collect
23 a claim under this article. With the consent of the employee, the commissioner shall have the
24 power to settle and adjust any claim to the same extent as might the employee.

25 ~~(b)~~ (c) The court in any action brought under this article may, in the event that any
26 judgment is awarded to the plaintiff or plaintiffs, assess costs of the action, including reasonable
27 attorney fees against the defendant. Such attorney fees in the case of actions brought under this
28 section by the commissioner shall be remitted by the commissioner to the Treasurer of the state.
29 The commissioner shall not be required to pay the filing fee or other costs or fees of any nature
30 or to file bond or other security of any nature in connection with such action or with proceedings
31 supplementary thereto, or as a condition precedent to the availability to the commissioner of any
32 process in aid of such action or proceedings. The commissioner shall have power to join various
33 claimants in one claim or lien, and in case of suit to join them in one cause of action.

NOTE: This purpose of this bill is to require an employee to provide written notice to his or her employer of any alleged nonpayment of wages. The bill provides the employer with an opportunity to cure the alleged violation. The bill provides a tolling of the statute of limitations. The bill provides judicial remedies. The bill makes the written notice a jurisdictional requirement.

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