

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 12**

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

6 _____
7 [Originating in the Committee on the Judiciary;

8 reported January 20, 2015.]
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12 A BILL to amend and reenact §21-5-4 of the Code of West Virginia, 1931, as amended, relating to
13 payment of wages by employers and when final wages are required to be paid; requiring
14 payment of wages to be by next regular payday; providing exception; providing that bonuses
15 and fringe benefits are not covered; reducing amount of liquidated damages available for
16 violation of this section; providing instance when liquidated damages are not available;
17 clarifying that section does not address whether overtime pay is due; authorizing payment
18 by mail if requested by employee; and establishing date paid if payment mailed pursuant to
19 employee request.

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

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

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

2 **§21-5-4. Cash orders; employees separated from payroll before paydays.**

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

7 (b) Whenever a person, firm or corporation discharges an employee, or whenever an
8 employee quits or resigns from employment, the person, firm or corporation shall pay the employee's
9 wages ~~in full no later than the next regular payday or four business days, whichever comes first.~~
10 ~~Payment shall be made through the regular pay channels or, if requested by the employee, by mail.~~
11 due for work that the employee performed prior to the separation of employment on or before the
12 next regular payday on which the wages would otherwise be due and payable. However, bonuses
13 and other fringe benefits of employment, as defined in section one of this article, are not considered
14 part of the compensation to be paid at the times specified in this section. For purposes of this section,
15 "business day" means any day other than Saturday, Sunday or any legal holiday as set forth in section
16 one, article two, chapter two of this code.

17 (c) ~~Whenever an employee quits or resigns, the person, firm or corporation shall pay the~~
18 ~~employee's wages in full no later than the next regular payday. Payment shall be made through the~~
19 ~~regular pay channels or, if requested by the employee, by mail. However, if the employee gives at~~
20 ~~least one pay period's written notice of intention to quit, the person, firm or corporation shall pay all~~
21 ~~wages earned by the employee at the time of quitting. Payment under this section may be made in~~
22 person in any manner permissible under section three of this article, through the regular pay channels

1 or, if requested by the employee, by mail. If the employee requests that payment under this section
2 be made by mail, that payment shall be considered to have been made on the date the mailed
3 payment is postmarked.

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

8 (e) If a person, firm or corporation fails to pay an employee wages as required under this
9 section, the person, firm or corporation, in addition to the amount which was unpaid when due, is
10 liable to the employee for ~~three~~ two times that unpaid amount as liquidated damages. This section
11 regulates the timing of wage payments upon separation from employment and not whether overtime
12 pay is due. Liquidated damages that can be awarded under this section are not available to
13 employees claiming they were misclassified as exempt from overtime under state and federal wage
14 and hour laws. Every employee shall have a lien and all other rights and remedies for the protection
15 and enforcement of his or her salary or wages, as he or she would have been entitled to had he or she
16 rendered service therefor in the manner as last employed; except that, for the purpose of liquidated
17 damages, the failure shall not be deemed to continue after the date of the filing of a petition in
18 bankruptcy with respect to the employer if he or she is adjudicated bankrupt upon the petition.

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