

# **WEST VIRGINIA LEGISLATURE**

**2019 REGULAR SESSION**

**SECOND ENGROSSMENT**

**Committee Substitute**

**for**

**House Bill 2049**

BY DELEGATES FOSTER, PORTERFIELD, WAXMAN,  
KESSINGER, COWLES, HARDY, FAST AND JENNINGS

[Introduced January 9, 2019; Referred

to the Committee on Industry and Labor then the  
Judiciary.]



1 A BILL to amend and reenact §21-5-7 of the Code of West Virginia, 1931, as amended, relating  
2 to a prime contractor's responsibility for wages and benefits of employees of a  
3 subcontractor; requiring notice to prime contractor within 100 days of the missing wages  
4 becoming payable; instituting a one year statute of limitations; and requiring employee to  
5 provide verifiable proof to substantiate missing wages.

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

## CHAPTER 21. LABOR.

### ARTICLE 5. WAGE PAYMENT AND COLLECTION.

#### §21-5-7. Prime contractor's responsibility for wages and benefits.

1 (a) Whenever any person, firm or corporation shall contract with another for the  
2 performance of any work which the prime contracting person has undertaken to perform for  
3 another, the prime contractor shall become civilly liable to employees engaged in the performance  
4 of work under such contract for the payment of wages and fringe benefits, exclusive of liquidated  
5 damages as provided in subsection (e), section four of this article, to the extent that the employer  
6 of such employee fails to pay such wages and fringe benefits:

7 (b) Any individual or entity seeking redress pursuant to subsection (a) must:

8 (1) Notify the prime contractor, by certified mail, of the missing wages or fringe benefits  
9 within 100 days of the date the wages or fringe benefits become payable to the employee:

10 (2) Commence the action within one year of the date the employee delivered notice to the  
11 prime contractor pursuant to subsection (b)(1); and

12 (3) Produce verifiable proof, such as a pay stub or bank statement, to substantiate the  
13 missing wages or fringe benefits

14 ~~Provided, That such employees have exhausted~~ (4) Exhaust all feasible remedies  
15 ~~contained in this article against such employer, but~~ Provided, That if the prime contractor has  
16 failed to notify the commissioner as required by section sixteen of this article, then the employee

- 17 ~~shall not be required to exhaust any remedies against the employer: *Provided, however,* That~~  
18 such employer shall become civilly liable to such prime contractor for any sum of money paid by  
19 him or her under this section.

NOTE: The purpose of this bill is to provide notice to a prime contractor, within 100 days, of a subcontractor's failure to pay wages or fringe benefits.

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