

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 2049

BY DELEGATES FOSTER, PORTERFIELD, WAXMAN,

KESSINGER, COWLES, HARDY, FAST AND JENNINGS

[Passed March 9, 2019; in effect ninety days from
passage.]

1 AN ACT 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; establishing personal and civil liability for the employer and its
4 shareholders, owners, directors, and officers to the prime contractor for any sums paid
5 under this section, including attorney's fees; requiring notice to prime contractor by
6 certified mail within 100 days of the missing wages becoming payable to the employee;
7 instituting a one-year statute of limitations; requiring the employer of the employee to
8 whom wages and fringe benefits are owed to whenever feasible provide immediately upon
9 request by the employee or the prime contractor complete payroll records relating to work
10 performed under the contract with the prime contractor; requiring when an employee to
11 whom wages and fringe benefits are due is represented by a union or other plan
12 administrator that the union or other plan administrator must whenever feasible
13 immediately upon notice of a claim cooperate with the employee and the prime contractor
14 to identify and quantify the wages and fringe benefits owed for work performed under the
15 contract with the prime contractor; providing that if the union or its agents or other plan
16 administrator become aware that an employer is not timely in the payment of wages and
17 fringe benefits the union or other plan administrator must immediately notify the affected
18 employee and the prime contractor for whom the affected employee provided work; and
19 providing that a prime contractor must notify the owner and the architect prior to the
20 completion of the contract if any subcontractor has not been paid in full.

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 the contract for the payment of wages and fringe benefits relating to such work
5 only, exclusive of attorney's fees, interest, liquidated damages, or any other damages of any kind,
6 as provided in §21-5-4(e) of this code, or other applicable law and/or common law, to the extent
7 that the employer of the employee fails to pay the wages and fringe benefits: for work performed
8 under the contract with the prime contractor. The employer, and its shareholders, owners,
9 directors, and officers shall be personally and civilly liable to the prime contractor for any sums
10 paid under this section, including attorney's fees.

11 (b) Any individual or entity seeking redress pursuant to subsection (a) of this section must:

12 (1) Notify the prime contractor, by certified mail, only that wages or fringe benefits have
13 not been paid within 100 days of the date the wages or fringe benefits become payable to the
14 employee; and

15 (2) Commence the action within one year of the date the employee delivered notice to the
16 prime contractor pursuant to subdivision (1) of this subsection.

17 (c) The employer of the employee to whom wages and/or fringe benefits are owed, shall
18 whenever feasible provide, immediately upon request by the employee or the prime contractor,
19 complete payroll records relating to work performed under the contract with the prime contractor.

20 (d) Whenever the employee to whom wages and/or fringe benefits are due is represented
21 by a union or other plan administrator, the union or other plan administrator, shall whenever
22 feasible, immediately upon notice of a claim hereunder, cooperate with the employee and the
23 prime contractor to identify and quantify the wages and fringe benefits owed for work performed
24 under the contract with the prime contractor. Further, if the union or agents thereof or other plan
25 administrator, including, but not limited to, third party administrators, trustees, administrators, or
26 employees, become aware that an employer is not timely in the payment of wages and/or fringe
27 benefits, the union or other plan administrator shall immediately notify the affected employee and
28 the prime contractor for whom the affected employee provided work.

29 (e) A prime contractor must notify the owner and the architect prior to the completion of
30 the contract if any subcontractor has not been paid in full.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2019.

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Governor