

SB224 CC #1 4-8

90 Days

Kleeh 7824

Senator Swope, from the committee of conference on matters of disagreement between the two houses, as to

Eng. Senate Bill No. 224, Repealing requirement for employer's bond for wages and benefits.

Submitted the following report, which was received:

Your committee of conference on the disagreeing votes of the two houses as to the amendments of the House to Engrossed Committee Substitute for Senate Bill 224 having met, after full and free conference, have agreed to recommend and do recommend to their respective houses, as follows:

That both houses recede from their respective positions as to the amendment of the Senate, striking everything after the enacting clause, and agree to the same as follows:

1 That §21-5-14 and §21-5-15 of the Code of West Virginia, 1931, as amended, be amended
2 and reenacted, all to read as follows:

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

§21-5-14. Employer's bond for wages and benefits.

1 (a) Bond required. -- With the exception of those who have been doing business in this
2 state actively and actually engaged in construction work, or the severance, production or
3 transportation of minerals for at least ~~five consecutive years~~ one year next preceding the posting
4 of the bond required by this section, every employer, person, firm or corporation engaged in or
5 about to engage in construction work, or the severance, production or transportation (excluding
6 railroads and water transporters) of minerals, shall, prior to engaging in any construction work, or
7 the severance, production or transportation of minerals, furnish a bond on a form prescribed by

8 the commissioner, payable to the State of West Virginia, with the condition that the person, firm
9 or corporation pay the wages and fringe benefits of his or her or its employees when due. The
10 amount of the bond shall be equal to the total of the employer's gross payroll for four weeks at full
11 capacity or production, plus fifteen percent of the said total of employer's gross payroll for four
12 weeks at full capacity or production. The amount of the bond shall increase or decrease as the
13 employer's payroll increases or decreases: *Provided*, That the amount of the bond shall not be
14 decreased, except with the commissioner's approval and determination that there are not
15 outstanding claims against the bond: *Provided, however*, That if the employer, person, firm or
16 corporation meets one of the following, then such employer, person, firm or corporation shall be
17 exempt from the requirements of this subsection:

18 (1) Has been in business in another state for at least five years;

19 (2) Has at least \$100,000 in assets; or

20 (3) Is a subsidiary of a parent company that has been in business for at least five years.

21 (b) Waiver. -- The commissioner shall waive the posting of any bond required by
22 subsection (a) of this section upon his or her determination that an employer is of sufficient
23 financial responsibility to pay wages and fringe benefits. The commissioner shall promulgate rules
24 and regulations according to the provisions of chapter twenty-nine-a of this code which prescribe
25 standards for the granting of such waivers.

26 (c) Form of bond; filing in office of circuit clerk. -- The bond may include, with the approval
27 of the commissioner, surety bonding, collateral bonding (including cash and securities), letters of
28 credit, establishment of an escrow account or a combination of these methods. The commissioner
29 shall accept an irrevocable letter of credit in lieu of any other bonding requirement. If collateral
30 bonding is used, the employer may deposit cash, or collateral securities or certificates as follows:
31 Bonds of the United States or its possessions, or of the federal land bank, or of the homeowner's
32 loan corporation; full faith and credit general obligation bonds of the State of West Virginia or other
33 states, and of any county, district or municipality of the State of West Virginia or other states; or

34 certificates of deposit in a bank in this state, which certificates shall be in favor of the state. The
35 cash deposit or market value of such securities or certificates shall be equal to or greater than the
36 sum of the bond. The commissioner shall, upon receipt of any such deposit of cash, securities or
37 certificates, promptly place the same with the State Treasurer whose duty it shall be to receive
38 and hold the same in the name of the state in trust for the purpose for which such deposit is made.
39 The employer making the deposit shall be entitled from time to time to receive from the State
40 Treasurer, upon the written approval of the commissioner, the whole or any portion of any cash,
41 securities or certificates so deposited, upon depositing with him or her in lieu thereof, cash or
42 other securities or certificates of the classes herein specified having value equal to or greater than
43 the sum of the bond. The commissioner shall cause a copy of the bond to be filed in the office of
44 the clerk of the county commission of the county wherein the person, firm or corporation is doing
45 business to be available for public inspection.

46 (d) Employee cause of action. -- Notwithstanding any other provision in this article, any
47 employee, whose wages and fringe benefits are secured by the bond, as specified in subsection
48 (c) of this section, has a direct cause of action against the bond for wages and fringe benefits that
49 are due and unpaid.

50 (e) Action of commissioner. -- Any employee having wages and fringe benefits unpaid may
51 inform the commissioner of the claim for unpaid wages and fringe benefits and request
52 certification thereof. If the commissioner, upon notice to the employer and investigation, finds that
53 such wages and fringe benefits or a portion thereof are unpaid, he or she shall make demand of
54 such employer for the payment of such wages and fringe benefits. If payment for such wages and
55 fringe benefits is not forthcoming within the time specified by the commissioner, not to exceed
56 thirty days, the commissioner shall certify such claim or portion thereof, and forward the
57 certification to the bonding company or the State Treasurer, who shall provide payment to the
58 affected employee within fourteen days of receipt of such certification. The bonding company, or
59 any person, firm or corporation posting a bond, thereafter shall have the right to proceed against

60 a defaulting employer for that part of the claim the employee paid. The procedure specified herein
61 shall not be construed to preclude other actions by the commissioner or employee to seek
62 enforcement of the provisions of this article by any civil proceedings for the payment of wages
63 and fringe benefits or by criminal proceedings as may be determined appropriate.

64 (f) Posting and reporting by employer. -- With the exception of those exempt under
65 subsection (a) of this section, any employer who is engaged in construction work or the
66 severance, production or transportation (excluding railroad and water transporters) of minerals
67 shall post the following in a place accessible to his or her or its employees:

68 (1) A copy of the bond or other evidence of surety specifying the number of employees
69 covered as provided under subsection (a) of this section, or notification that the posting of a bond
70 has been waived by the commissioner; and

71 (2) A copy of the notice in the form prescribed by the commissioner regarding the duties
72 of employers under this section. During the first ~~two years~~ year that any person, firm or corporation
73 is doing business in this state in construction work, or in the severance, production or
74 transportation of minerals, such person, firm or corporation shall on or before February 1, May,
75 August and November of each calendar year file with the department a verified statement of the
76 number of employees, or a copy of the quarterly report filed with the Bureau of Employment
77 Programs showing the accurate number of employees, unless the commissioner waives the filing
78 of the report upon his or her determination that the person, firm or corporation is of sufficient
79 stability that the reporting is unnecessary.

80 (g) Termination of bond. -- The bond may be terminated, with the approval of the
81 commissioner, after an employer submits a statement, under oath or affirmation lawfully
82 administered, to the commissioner that the following has occurred: The employer has ceased
83 doing business and all wages and fringe benefits have been paid, or the employer has been doing
84 business in this state for at least ~~five consecutive years~~ one year and has paid all wages and
85 fringe benefits. The approval of the commissioner will be granted only after the commissioner has

86 determined that the wages and fringe benefits of all employees have been paid. The bond may
87 also be terminated upon a determination by the commissioner that an employer is of sufficient
88 financial responsibility to pay wages and fringe benefits.

§21-5-15. Violations; cease and desist orders and appeals therefrom; criminal penalties.

1 (a) Any person, firm or corporation who knowingly and willfully fails to provide and maintain
2 an adequate bond as required by section fourteen of this article is guilty of a misdemeanor, and,
3 upon conviction thereof, shall be fined not less than \$200 nor more than \$5,000, or imprisoned in
4 the county jail not more than one month, or both fined and imprisoned.

5 (b) Any person, firm or corporation who knowingly, willfully and fraudulently disposes of or
6 relocates assets with intent to deprive employees of their wages and fringe benefits is guilty of a
7 felony and, upon conviction thereof, shall be fined not less than \$5,000 nor more than ~~\$30,000~~
8 \$60,000, or imprisoned in the ~~penitentiary~~ state correctional facility not less than one nor more
9 than three years, or both fined and imprisoned.

10 (c) (1) At any time the commissioner determines that a person, firm or corporation has not
11 provided or maintained an adequate bond, as required by section fourteen of this article, the
12 commissioner shall issue a cease and desist order which is to be issued and posted requiring that
13 said person, firm or corporation either post an adequate bond or cease further operations in this
14 state within a period specified by the commissioner; which period shall be not less than five nor
15 more than fourteen days. The cease and desist order may be issued by the commissioner at his
16 or her own instance or at his or her direction, with or without application to or the approval of any
17 other officer, agent, department or employee of the state or application to any court for approval
18 thereof. Any person, firm or corporation who continues to engage in construction work or the
19 severance, production or transportation of minerals without an approved bond after such specified
20 period shall be guilty of a felony, and, upon conviction thereof, shall be fined not less than \$5,000
21 nor more than \$30,000, or imprisoned in the penitentiary not less than one nor more than three
22 years, or both fined and imprisoned. Any cease and desist order issued by the commissioner

23 pursuant to this subsection may be directed by the commissioner to the sheriff of the county
24 wherein the business activity of which the order is the subject, or to any officer or employee of the
25 department, commanding such sheriff, officer or employee to serve such order upon the business
26 in question within seventy-two hours and to make proper return thereof.

27 (2) Any other provision of law to the contrary notwithstanding, any person against whom
28 a cease and desist order has been directed shall be entitled to judicial review thereof by filing a
29 verified petition taking an appeal therefrom within fifteen days from the date of service of such
30 order. Such verified petition shall be filed in the circuit court of the county wherein service of the
31 order was completed, at the option of the petitioner, or, in the circuit court of Kanawha County,
32 West Virginia. If the appeal is not perfected within such fifteen day period, the cease and desist
33 order shall be final and shall not thereafter be subject to judicial review. No appeal shall be
34 deemed to have been perfected except upon the filing with the clerk of the circuit court of the
35 county wherein the appeal is taken, of a bond or other security to be approved by the court, in an
36 amount of not less than the amount of the bond otherwise required to be posted under the
37 provisions of section fourteen of this article. The person so filing a petition of appeal shall cause
38 a copy of the petition and bond or other posted security to be served upon the commissioner by
39 certified mail, return receipt requested, within seven days after the date upon which the petition
40 for appeal is filed.

41 (d) Any person who threatens any officer, agent or employee of the department or other
42 person authorized to assist the commissioner in the performance of his or her duties under any
43 provision of section fourteen of this article or of this section or who shall interfere with or attempt
44 to prevent any such officer, agent, employee or other person in the performance of such duties
45 shall be guilty of a felony, and, upon conviction thereof, shall be fined in an amount of not less
46 than \$1,000 nor more than \$3,000 or imprisoned in the penitentiary not less than one nor more
47 than three years, or both such fine and imprisonment.;

And,

That both houses recede from their respective positions as to the title of the bill and agree to the same as follows:

Eng. Com. Sub. for Senate Bill 224 -- A BILL to amend and reenact §21-5-14 and §21-5-15 of the Code of West Virginia, 1931, as amended, relating to the requirement of a bond for wages and benefits for certain designated employers, persons, firms, or corporations generally; lowering period of time for the requirement that certain designated employers, persons, firms or corporations shall furnish a bond for wages and benefits to at least one year; providing exemptions for employers, persons, firms, or corporations who have been in business in another state for at least five years, employers, persons, firms or corporations who have at least \$100,000 in assets or employers, persons, firms, or corporations who are a subsidiary of a parent company that has been in business for at least five years; lowering period of time in which a person, firm or corporation is required to file a statement or copy with the Bureau of Employment Programs; lowering period of time employer must have been doing business in order to terminate bond; increasing the maximum criminal fine for any person, firm or corporation who knowingly, willfully and fraudulently disposes of or relocates assets with the intent to deprive employees of their wages and fringe benefits from \$30,000 to \$60,000; and making corrections to current code.

Respectfully submitted,

Roger Hanshaw,

Chair.

Chandler Swope,

Chair.

Geoff Foster,

Robert L. Karnes,

Barbara Evans Fleischauer,

*Conferees on the part of the House
of Delegates.*

Richard Ojeda,

Conferees on the part of the Senate.