WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1975

ENROLLED
Committee Substitute
SENATE BILL NO. 482

(By Mr. Original Sponsor)

PASSED March 8, 1975
In Effect ninety days from Passage
ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 482
(By Mr. Rogerson, original sponsor)

[Passed March 8, 1975; in effect ninety days from passage.]

AN ACT to amend and reenact sections one, two, four and seven, article five, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto six new sections, designated sections eight-a, nine, ten, eleven, twelve and thirteen, all relating to wages and their payment, definitions, separation of employees, payment of wages conceded to be due, contractor's responsibility for wage payments, deceased employees, withholding of wages, notification posting and record keeping, no-waiver provisions, enforcement, and employees civil remedies for nonpayment of wages.

Be it enacted by the Legislature of West Virginia:

That sections one, two, four and seven, article five, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and to further amend said article by adding thereto six new sections, designated sections eight-a, nine, ten, eleven, twelve and thirteen, all to read as follows:

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

§21-5-1. Definitions.

1 As used in this article:

2 (a) The term "firm" includes any partnership, as-

3 sociation, joint stock company, trust, division of a cor-
poration, the administrator or executor of the estate of a deceased individual, or the receiver, trustee, or successor of any of the same, or officer thereof, employing any person.

(b) The term "employee" or "employees" includes any person suffered or permitted to work by a person, firm, or corporation.

(c) The term "wages" means compensation for labor or services rendered by an employee, whether the amount is determined on a time, task, piece, commission, or other basis of calculation.

(d) The term "commissioner" means commissioner of labor.

(e) The term "railroad company" includes any firm or corporation engaged primarily in the business of transportation by rail.

(f) The term "special agreement" means an arrangement filed with and approved by the commissioner where­by a person, firm or corporation is permitted upon a compelling showing of good cause to establish regular paydays less frequently than semimonthly, provided that in no event shall the employee be paid in full less frequently than once each calendar month on a regularly established schedule.

(g) The term "deductions" includes amounts required by law to be withheld, and amounts authorized for union or club dues, pension plans, payroll savings plans, credit unions, charities and hospitalization and medical insurance.

(h) The term "officer" shall include officers or agents in the management of a corporation or firm, who knowingly permits the corporation or firm to violate the provisions of this article.

(i) The term "amount due" shall include at least all wages earned up to and including the fifth day immedi­ately preceding the regular payday.

§21-5-2. Semimonthly payment of wages by railroads.

Every railroad company, authorized to do business by the laws of this state shall, on or before the first day of
each month, pay the employees thereof the wages earned
by them during the first half of the preceding month,
ending with the fifteenth day thereof; and on or before
the fifteenth day of each month, pay the employees
thereof the wages earned by them during the last half
of the preceding calendar month: Provided, That if, at
any time of payment, any employee shall be absent from
his regular place of labor, and shall not receive his
wages through a duly authorized representative, he shall
be entitled to such payment at any time thereafter upon
demand upon the proper paymaster at the place where
such wages are usually paid and where the next pay
is due, and the proper mailing in the United States post
office of such payment in time to reach the usual post
office of the employee by the time aforesaid, in the usual
course of the mails, shall be a compliance with this sec-
tion.

It shall not be lawful for any railroad company to
enter into or make any agreement with any employee
for the payment of wages of any such employee other-
wise than as provided in this section, except to pay such
wages at shorter intervals than herein provided. Every
agreement made in violation of this section shall be
deemed to be null and void.

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

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

(b) Whenever a person, firm or corporation dis-
charges an employee, such person, firm or corpora-
tion shall pay the employee's wages in full within seventy-
two hours.

(c) Whenever an employee quits or resigns, the per-
son, firm or corporation shall pay the employee's wages
no later than the next regular payday, either through
the regular pay channels or by mail if requested by the employee, except that if the employee gives at least one pay period's notice of intention to quit the person, firm or corporation shall pay all wages earned by the employee at the time of quitting.

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

(e) If a person, firm or corporation fails to pay an employee wages as required under this section, such person, firm or corporation shall, in addition to the amount due, be liable to the employee for liquidated damages in the amount of wages at his regular rate for each day the employer is in default, until he is paid in full, without rendering any service therefor: Provided, however, that he shall cease to draw such wages thirty days after such default. Every employee shall have such lien and all other rights and remedies for the protection and enforcement of such salary or wages, as he would have been entitled to had he rendered service therefor in manner as last employed; except that, for the purpose of such liquidated damages, such failure shall not be deemed to continue after the date of the filing of a petition in bankruptcy with respect to the employer if he is adjudicated bankrupt upon such petition.

§21-5-7. Prime contractor's responsibility for wage payments.

Whenever any person shall contract with another for the performance of any work which the prime contracting person has undertaken to perform for another, the prime contractor shall become civilly liable to employees engaged in the performance of work under such contract for the payment of wages, exclusive of liquidated damages as provided in section four (e) of this article, to the extent that the employer of such employees fails to pay such wages: Provided, That such employees have
exhausted all feasible remedies contained in this article against such employer: Provided, however, That such employer shall become civilly liable to such prime contractor for any sum of money paid by him under this section.

§21-5-8a. Deceased employees.

In the event of the death of any employee, wages due him by a person, firm or corporation not in excess of eight hundred dollars may upon proper demand be paid, in the absence of actual notice of the pendency of probate proceedings, without requiring letters testamentary or of administration in the following order of preference to decedent's: (1) Surviving spouse, (2) children eighteen years of age and over in equal shares, (3) father and mother, or survivor, (4) sisters and brothers, or to the person who pays the funeral expenses. Payments under this section shall release and discharge the person, firm or corporation to the amount of such payment.


Every person, firm and corporation shall:

1. Notify his employees in writing, at the time of hiring of the rate of pay, and of the day, hour, and place of payment.

2. Notify his employees in writing, or through a posted notice maintained in a place accessible to his employees of any changes in the arrangements specified above prior to the time of such changes.

3. Make available to his employees in writing or through a posted notice maintained in a place accessible to his employees, employment practices and policies with regard to vacation pay, sick leave, and comparable matters.

4. Furnish each employee with an itemized statement of deductions made from his wages for each pay period such deductions are made.

5. Keep posted in a place accessible to his employees an abstract of this act furnished by the commissioner, and

6. Make such records of the persons employed by
him, including wage and hour records, preserve such
records for such periods of time, and make such reports
therefrom to the commissioner, as the commissioner shall
prescribe by regulation as necessary or appropriate for
the enforcement of the provisions of this article.

§21-5-10. Provisions of law may not be waived by agreement.
Except as provided in section thirteen, no provision
of this article may in any way be contravened or set
aside by private agreement, and the acceptance by an
employee of a partial payment of wages shall not con-
stitute a release as to the balance of his claim and any
release required as a condition of such payment shall
be null and void.

§21-5-11. Administrative enforcement.
(a) The commissioner shall enforce and administer
the provisions of this article in accordance with chapter
twenty-nine-a of this code. The commissioner or his
authorized representatives are empowered to enter and
inspect such places, question such employees, and in-
vestigate such facts, conditions, or matters as they may
demn appropriate, to determine whether any person,
firm or corporation has violated any provision of this
article, or any rule or regulation issued hereunder or
which may aid in the enforcement of the provisions of
this article.

(b) The commissioner or his authorized representa-
tives shall have power to administer oaths and examine
witnesses under oath, issue subpoenas, compel the at-
tendance of witnesses, and the production of papers,
books, accounts, records, payrolls, documents, and testi-
mony, and to take depositions and affidavits in any pro-
ceeding before said commissioner.

(c) In case of failure of any person to comply with
any subpoena lawfully issued, or on the refusal of any
witness to testify to any matter regarding which he
may be lawfully interrogated, it shall be the duty of
the circuit court, on application by the commissioner,
to compel obedience by attachment proceedings for con-
tempt, as in the case of disobedience of the requirements
of a subpoena issued from such court or a refusal to testify therein.

§21-5-12. Employees' remedies.
(a) Any person whose wages have not been paid in accord with this article, or the commissioner or his designated representative, upon the request of such person, may bring any legal action necessary to collect a claim under this article. With the consent of the employee, the commissioner shall have the power to settle and adjust any claim to the same extent as might the employee.

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

The commissioner shall make rules and regulations to the extent necessary to effectuate the purposes of this article, in accordance with the provisions of chapter twenty-nine-a of the code of West Virginia, as amended.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Davis  
Chairman Senate Committee

Clarence E. Chastain  
Chairman House Committee

Originated in the Senate.

Takes effect ninety days from passage.

J. A. Blankenship  
Clerk of the House of Delegates

J. W. Sizemore  
President of the Senate

The within Approved this the 24th day of Thank, 1975.

A. S. Shank
Governor
PRESENTED TO THE GOVERNOR

Date 3/18/75
Time 4:55 p.m.