

APPROVED AND SIGNED BY THE GOVERNOR

Date 4-28-81

Time \_\_\_\_\_

No: 1058

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1981



# ENROLLED

Com. Sub. for  
HOUSE BILL No. 1058

(By Mr. Moore + Mr. Cook)



Passed April 9, 1981

In Effect Ninety Days From Passage



**ENROLLED**

**COMMITTEE SUBSTITUTE**

**FOR**

**H. B. 1058**

(By MR. MOORE and MR. COOK)

[Passed April 9, 1981; in effect ninety days from passage.]

AN ACT to amend and reenact sections one, six 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 three new sections, designated sections fourteen, fifteen and sixteen, all relating to providing definitions; requiring certain employers to post bond to secure the payment of wages and fringe benefits; empowering the state commissioner of labor to waive the bonding requirement; giving employees a direct claim against the bond; providing for termination of the bond; providing notice to the commissioner; and prescribing certain violations and criminal penalties therefor.

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

That sections one, six 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 that said article be further amended by adding thereto three new sections, designated sections fourteen, fifteen and sixteen, 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, association,  
3 joint-stock company, trust, division of a corporation, the ad-  
4 ministrator or executor of the state of a deceased individual,  
5 or the receiver, trustee, or successor of any of the same, or  
6 officer thereof, employing any person.

7 (b) The term "employee" or "employees" includes any per-  
8 son suffered or permitted to work by a person, firm or cor-  
9 poration.

10 (c) The term "wages" means compensation for labor or  
11 services rendered by an employee, whether the amount is  
12 determined on a time, task, piece, commission or other basis  
13 of calculation. As used in sections four, five, eight-a, ten  
14 and twelve of this article, the term "wages" shall also include  
15 then accrued fringe benefits capable of calculation and pay-  
16 able directly to an employee: *Provided*, That nothing herein  
17 contained shall require fringe benefits to be calculated con-  
18 trary to any agreement between an employer and his em-  
19 ployees which does not contradict the provisions of this article.

20 (d) The term "commissioner" means commissioner of labor  
21 or his designated representative.

22 (e) The term "railroad company" includes any firm or cor-  
23 poration engaged primarily in the business of transportation  
24 by rail.

25 (f) The term "special agreement" means an arrangement  
26 filed with and approved by the commissioner whereby a per-  
27 son, firm or corporation is permitted upon a compelling show-  
28 ing of good cause to establish regular paydays less frequently  
29 than once in every two weeks, provided that in no event  
30 shall the employee be paid in full less frequently than once  
31 each calendar month on a regularly established schedule.

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

36 (h) The term "officer" shall include officers or agents in  
37 the management of a corporation or firm, who knowingly

38 permits the corporation or firm to violate the provisions of  
39 this article.

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

43 (j) The term “construction” means the furnishing of work in  
44 the fulfillment of a contract for the construction, alteration,  
45 decoration, painting or improvement of a new or existing  
46 building, structure, roadway or pipeline, or any part thereof,  
47 or for the alteration, improvement or development of real  
48 property: *Provided*, That construction performed for the owner  
49 or lessee of a single family dwelling or a family farming enter-  
50 prise is excluded.

51 (k) The term “minerals” means clay, coal, flagstone, gravel,  
52 limestone, manganese, sand, sandstone, shale, iron ore and  
53 any other metallurgical ore.

54 (l) The term “fringe benefits” means any benefit provided  
55 an employee or group of employees by an employer, or which  
56 is required by law, and includes regular vacation, graduated  
57 vacation, floating vacation, holidays, sick leave, personal leave,  
58 production incentive bonuses, sickness and accident benefits  
59 and benefits relating to medical and pension coverage.

60 (m) The term “employer” means any person, firm or  
61 corporation employing any employee.

**§21-5-6. Refusal to pay wages or redeem orders.**

1 If any person, firm or corporation shall refuse for the period  
2 of five days to settle with and pay any of its employees at  
3 the intervals of time as provided in section three of this article,  
4 or to provide fringe benefits after the same are due, or shall  
5 neglect or refuse to redeem any cash orders provided for in  
6 this article, within the time specified, if presented, and suit  
7 be brought for the amount overdue and unpaid, judgment for  
8 the amount of such claim proven to be due and unpaid, with  
9 legal interest thereon until paid, shall be rendered in favor  
10 of the plaintiff in such action; and, if the employee continues  
11 to hold the cash order herein provided for, given for payment  
12 of labor, in case of the insolvency of the person, firm or cor-

13 poration giving same, such employee shall not lose his lien  
14 and preference under existing laws.

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

1 Whenever any person, firm or corporation shall contract  
2 with another for the performance of any work which the prime  
3 contracting person has undertaken to perform for another,  
4 the prime contractor shall become civilly liable to employees  
5 engaged in the performance of work under such contract for  
6 the payment of wages and fringe benefits, exclusive of liqui-  
7 dated damages as provided in section four (e) of this article,  
8 to the extent that the employer of such employee fails to pay  
9 such wages and fringe benefits: *Provided*, That such employees  
10 have exhausted all feasible remedies contained in this article  
11 against such employer, but if the prime contractor has failed  
12 to notify the commissioner as required by section sixteen  
13 of this article, then the employee shall not be required to  
14 exhaust any remedies against the employer: *Provided, however*,  
15 That such employer shall become civilly liable to such prime  
16 contractor for any sum of money paid by him under this  
17 section.

**§21-5-14. Bond required of certain employers to secure payment  
of wages and fringe benefits; waiver of bond; form of  
bond; claim against bond; exemption statement; post-  
ing of notice; termination of bond.**

1 (a) With the exception of those who have been doing business  
2 in this state for at least five consecutive years, every person,  
3 firm or corporation engaged in or about to engage in con-  
4 struction work, or the severance, production or transportation  
5 (excluding railroads and water transporters) of minerals, shall  
6 furnish a bond on a form prescribed by the commissioner,  
7 payable to the state of West Virginia with the condition that  
8 the person, firm or corporation pay the wages and fringe bene-  
9 fits of his or its employees when due. The amount of the  
10 bond shall be equal to the total of the employer's gross pay-  
11 roll for four weeks at full capacity or production, plus fifteen  
12 percent of the said total of the employer's gross payroll  
13 for four weeks at full capacity or production. The amount  
14 of the bond shall increase or decrease as the employer's payroll

15 increases or decreases: *Provided*, That the amount of the bond  
16 shall not be decreased, except with the commissioner's ap-  
17 proval and determination that there are not outstanding claims  
18 against the bond.

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

26 (c) The bond may include, with the approval of the com-  
27 missioner, surety bonding, collateral bonding (including cash  
28 and securities), establishment of an escrow account or a combi-  
29 nation of these methods. If collateral bonding is used, the em-  
30 ployer may deposit cash, or collateral securities or certificates  
31 as follows: Bonds of the United States of America or its posses-  
32 sions, or of the federal land bank, or of the home owner's loan  
33 corporation; full faith and credit general obligation bonds of the  
34 state of West Virginia or other states, and of any county, district  
35 or municipality of the state of West Virginia or other states; or  
36 certificates of deposit in a bank in this state, which certificates  
37 shall be in favor of the state. The cash deposit or market value  
38 of such securities or certificates shall be equal to or greater than  
39 the sum of the bond. The commissioner shall, upon receipt of  
40 any such deposit of cash, securities or certificates, promptly  
41 place the same with the state treasurer whose duty it shall be to  
42 receive and hold the same in the name of the state in trust for  
43 the purpose for which such deposit is made. The employer mak-  
44 ing the deposit shall be entitled from time to time to receive  
45 from the state treasurer, upon the written approval of the com-  
46 missioner, the whole or any portion of any cash, securities or  
47 certificiates so deposited, upon depositing with him in lieu there-  
48 of, cash or other securities or certificates of the classes herein  
49 specified having value equal to or greater than the sum of the  
50 bond.

51 (d) Notwithstanding any other provision in this article, any  
52 employee, whose wages and fringe benefits are secured by the  
53 bond, as specified in subsection (c) of this section, has a direct

54 cause of action against the bond for wages and fringe benefits  
55 that are due and unpaid.

56 (e) Any employee having wages and fringe benefits unpaid,  
57 may inform the commissioner of the claim for unpaid wages  
58 and fringe benefits and request certification thereof. If the com-  
59 missioner, upon notice to the employer and investigation finds  
60 that such wages and fringe benefits or a portion thereof are un-  
61 paid, he shall make demand of such employer for the payment  
62 of such wages and fringe benefits. If payment for such wages  
63 and fringe benefits is not forthcoming within the time specified  
64 by the commissioner, not to exceed thirty days, the commission-  
65 er shall certify such claim or portion thereof, and forward the  
66 certification to the bonding company or the state treasurer, who  
67 shall provide payment to the affected employee within fourteen  
68 days of receipt of such certification. The bonding company,  
69 or any person, firm or corporation posting a bond, thereafter  
70 shall have the right to proceed against a defaulting employer  
71 for that part of the claim of the employee paid.

72 (f) With the exception of those exempt under subsection  
73 (a) of this section, any employer who is engaged in construc-  
74 tion work or the severance, production or transportation (ex-  
75 cluding railroad and water transporters) of minerals shall post  
76 one of the following in a place accessible to his or its em-  
77 ployees: A copy of the bond provided under subsection (a)  
78 of this section, or notification that the posting of a bond has  
79 been waived by the commissioner.

80 (g) The bond may be terminated, with the approval of the  
81 commissioner, after an employer submits a statement, under  
82 oath or affirmation lawfully administered, to the commissioner  
83 that the following has occurred: The employer has ceased  
84 doing business and all wages and fringe benefits have been  
85 paid, or the employer has been doing business in this state for  
86 at least five consecutive years and has paid all wages and  
87 fringe benefits. The bond may also be terminated upon a  
88 determination by the commissioner that an employer is of  
89 sufficient financial responsibility to pay wages and fringe  
90 benefits.

**§21-5-15. Violations; criminal penalties.**

1 (a) Any person, firm or corporation who knowingly, will-  
2 fully, and with intent to deprive employees of their wages and  
3 fringe benefits fails to provide and maintain a bond as required  
4 by section fourteen of this article is guilty of a misdemeanor,  
5 and, upon conviction thereof, shall be fined not less than two  
6 hundred dollars nor more than five thousand dollars, or im-  
7 prisoned in the county jail not more than one month, or both  
8 fined and imprisoned.

9 (b) Any person, firm or corporation who knowingly, will-  
10 fully and fraudulently disposes of or relocates assets with in-  
11 tent to deprive employees of their wages and fringe benefits  
12 is guilty of a felony, and, upon conviction thereof, shall be  
13 fined not less than five thousand dollars nor more than thirty  
14 thousand dollars, or imprisoned in the penitentiary not less than  
15 one nor more than three years, or both fined and imprisoned.

**§21-5-16. Notice to be given to commissioner of labor.**

1 Whenever a person, firm or corporation contracts or sub-  
2 contracts with an employer, which such contract or subcontract  
3 contemplates the performance of construction work or the  
4 severance, production or transportation (excluding railroads  
5 or water transporters) of minerals, then the prime contractor or  
6 subcontractor shall notify the commissioner in writing by certi-  
7 fied mail, return receipt requested, of such contract or sub-  
8 contract as to the employer's name, the location of the job  
9 site and the employer's principal business location.

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

  
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Chairman Senate Committee

  
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Chairman House Committee

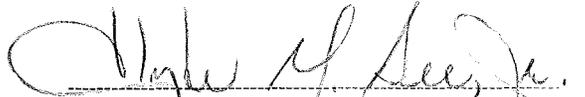
Originated in the House.

Takes effect ninety days from passage.

  
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Clerk of the Senate

  
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Clerk of the House of Delegates

  
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President of the Senate

  
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Speaker House of Delegates

The within is approved this the 28  
day of April, 1981.

  
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Governor

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OFFICE STATE

SECRETARY OF STATE