WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1981

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ENROLLED

Com. Sub. for
HOUSE BILL No. 1058

(By Mr. Moore and Mr. Cook)

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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:
(a) The term "firm" includes any partnership, association, joint-stock company, trust, division of a corporation, the administrator or executor of the state 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. As used in sections four, five, eight-a, ten and twelve of this article, the term "wages" shall also include then accrued fringe benefits capable of calculation and payable directly to an employee: Provided, That nothing herein contained shall require fringe benefits to be calculated contrary to any agreement between an employer and his employees which does not contradict the provisions of this article.

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

(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 once in every two weeks, 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.

(j) The term “construction” means the furnishing of work in the fulfillment of a contract for the construction, alteration, decoration, painting or improvement of a new or existing building, structure, roadway or pipeline, or any part thereof, or for the alteration, improvement or development of real property: Provided, That construction performed for the owner or lessee of a single family dwelling or a family farming enterprise is excluded.

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

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

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

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

If any person, firm or corporation shall refuse for the period of five days to settle with and pay any of its employees at the intervals of time as provided in section three of this article, or to provide fringe benefits after the same are due, or shall neglect or refuse to redeem any cash orders provided for in this article, within the time specified, if presented, and suit be brought for the amount overdue and unpaid, judgment for the amount of such claim proven to be due and unpaid, with legal interest thereon until paid, shall be rendered in favor of the plaintiff in such action; and, if the employee continues to hold the cash order herein provided for, given for payment of labor, in case of the insolvency of the person, firm or cor-
poration giving same, such employee shall not lose his lien and preference under existing laws.

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

Whenever any person, firm or corporation 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 and fringe benefits, exclusive of liquidated damages as provided in section four (e) of this article, to the extent that the employer of such employee fails to pay such wages and fringe benefits: Provided, That such employees have exhausted all feasible remedies contained in this article against such employer, but if the prime contractor has failed to notify the commissioner as required by section sixteen of this article, then the employee shall not be required to exhaust any remedies against the 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.

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

(a) With the exception of those who have been doing business in this state for at least five consecutive years, every person, firm or corporation engaged in or about to engage in construction work, or the severance, production or transportation (excluding railroads and water transporters) of minerals, shall furnish a bond on a form prescribed by the commissioner, payable to the state of West Virginia with the condition that the person, firm or corporation pay the wages and fringe benefits of his or its employees when due. The amount of the bond shall be equal to the total of the employer's gross payroll for four weeks at full capacity or production, plus fifteen percent of the said total of the employer's gross payroll for four weeks at full capacity or production. The amount of the bond shall increase or decrease as the employer's payroll
increases or decreases: *Provided,* That the amount of the bond
shall not be decreased, except with the commissioner’s ap-
proval and determination that there are not outstanding claims
against the bond.

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

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

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

(e) Any employee having wages and fringe benefits unpaid, may inform the commissioner of the claim for unpaid wages and fringe benefits and request certification thereof. If the commissioner, upon notice to the employer and investigation finds that such wages and fringe benefits or a portion thereof are unpaid, he shall make demand of such employer for the payment of such wages and fringe benefits. If payment for such wages and fringe benefits is not forthcoming within the time specified by the commissioner, not to exceed thirty days, the commissioner shall certify such claim or portion thereof, and forward the certification to the bonding company or the state treasurer, who shall provide payment to the affected employee within fourteen days of receipt of such certification. The bonding company, or any person, firm or corporation posting a bond, thereafter shall have the right to proceed against a defaulting employer for that part of the claim of the employee paid.

(f) With the exception of those exempt under subsection (a) of this section, any employer who is engaged in construction work or the severance, production or transportation (excluding railroad and water transporters) of minerals shall post one of the following in a place accessible to his or its employees: A copy of the bond provided under subsection (a) of this section, or notification that the posting of a bond has been waived by the commissioner.

(g) The bond may be terminated, with the approval of the commissioner, after an employer submits a statement, under oath or affirmation lawfully administered, to the commissioner that the following has occurred: The employer has ceased doing business and all wages and fringe benefits have been paid, or the employer has been doing business in this state for at least five consecutive years and has paid all wages and fringe benefits. The bond may also be terminated upon a determination by the commissioner that an employer is of sufficient financial responsibility to pay wages and fringe benefits.
§21-5-15. Violations; criminal penalties.

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

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

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

Whenever a person, firm or corporation contracts or subcontracts with an employer, which such contract or subcontract contemplates the performance of construction work or the severance, production or transportation (excluding railroads or water transporters) of minerals, then the prime contractor or subcontractor shall notify the commissioner in writing by certified mail, return receipt requested, of such contract or subcontract as to the employer's name, the location of the job site and the employer's principal business location.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

P. P. Bayer
Chairman Senate Committee

Tony E. Wollow
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

J. Scott Wells
Clerk of the Senate

O.H. Blevens
Clerk of the House of Delegates

Jeff K moda
President of the Senate

Henry A. Lewis
Speaker House of Delegates

The within __________ in approved__________ this the __________ day of __________ , 1981.

John D. Bayne
Governor