

# **WEST VIRGINIA LEGISLATURE**

**2018 REGULAR SESSION**

**Committee Substitute**

**for**

**House Bill 4368**

BY DELEGATES WESTFALL, FRICH AND LANE

[Reported February 16, 2018; Referred to the  
Committee on Industry and Labor then the Judiciary.]



1 A BILL to amend and reenact §21-5-3 of the Code of West Virginia, 1931, as amended, relating  
2 to voluntary assignments of wages by state employees who have been overpaid; clarifying  
3 exemption from wages; and requiring written acknowledgement and waiver as part of a  
4 voluntary authorization or order.

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

**ARTICLE 5. WAGE PAYMENT AND COLLECTION.**

**§21-5-3. Payment of wages by employers other than railroads; assignments of wages.**

1 (a) Every person, firm or corporation doing business in this state, except railroad  
2 companies as provided in section one of this article, shall settle with its employees at least twice  
3 every month and with no more than 19 days between settlements, unless otherwise provided by  
4 special agreement, and pay them the wages due, less authorized deductions and authorized  
5 wage assignments, for their work or services.

6 (b) Payment required in subsection (a) of this section shall be made:

7 (1) In lawful money of the United States;

8 (2) By cash order as described and required in §21-5-4 of this code;

9 (3) By deposit or electronic transfer of immediately available funds into an employee's  
10 payroll card account in a federally insured depository institution. The term "payroll card account"  
11 means an account in a federally insured depository institution that is directly or indirectly  
12 established through an employer and to which electronic fund transfers of the employee's wages,  
13 salary, commissions or other compensation are made on a recurring basis, whether the account  
14 is operated or managed by the employer, a third person payroll processor, a depository institution  
15 or another person. "Payroll card" means a card, code or combination thereof or other means of  
16 access to an employee's payroll card account, by which the employee may initiate electronic fund  
17 transfers or use a payroll card to make purchases or payments. Payment of employee  
18 compensation by means of a payroll card must be agreed upon in writing by both the person, firm  
19 or corporation paying the compensation and the person being compensated; or

20 (4) By any method of depositing immediately available funds in an employee's demand or  
21 time account in a bank, credit union or savings and loan institution that may be agreed upon in  
22 writing between the employee and such person, firm or corporation, which agreement shall  
23 specifically identify the employee, the financial institution, the type of account and the account  
24 number: *Provided*, That nothing herein contained shall be construed in a manner to require any  
25 person, firm or corporation to pay employees by depositing funds in a financial institution.

26 (c) If, at any time of payment, any employee ~~shall be~~ is absent from his or her regular  
27 place of labor and ~~shall~~ does not receive his or her wages through a duly authorized  
28 representative, he or she ~~shall be~~ is entitled to payment at any time thereafter upon demand upon  
29 the proper paymaster at the place where his or her wages are usually paid and where the next  
30 pay is due.

31 (d) Nothing herein contained ~~shall~~ may affect the right of an employee to assign part of his  
32 or her claim against his or her employer except as in subsection (e) of this section.

33 (e) No assignment of or order for future wages ~~shall~~ may be valid for a period exceeding  
34 one year from the date of the assignment or order. An assignment or order shall be acknowledged  
35 by the party making the same before a notary public or other officer authorized to take  
36 acknowledgments, and any order or assignment shall specify thereon the total amount due and  
37 collectible by virtue of the same. Unless §21-5-3(f) of this code is applicable, and three-fourths of  
38 the periodical earnings or wages of the assignor ~~shall~~ are all times ~~be~~ exempt from such  
39 assignment or order and no assignment or order ~~shall be~~ is valid which does not so state upon its  
40 face: *Provided*, That no such order or assignment ~~shall be~~ is valid unless the written acceptance  
41 of the employer of the assignor to the making thereof is endorsed thereon: *Provided, however*,  
42 That nothing herein contained ~~shall~~ may be construed as affecting the right of employer and  
43 employees to agree between themselves as to deductions to be made from the payroll of  
44 employees.

45           (f) If an employee of the state has been overpaid wages, including incremental salary  
46 increases pursuant to §5-5-2 of this code, an employee may authorize an assignment or order for  
47 future wages to repay the overpayment in an amount not to exceed three-fourths of his or her  
48 periodical earnings or wages: *Provided*, That an employee's authorization is voluntary, and the  
49 written authorization contains an express acknowledgement and waiver by the employee of the  
50 right to exempt three-fourths of the periodical earnings or wages from the assignment or order.

NOTE: The purpose of this bill is to allow a state employee to voluntarily deduct an amount greater than 25 percent of their wages in order to repay an overpayment.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.