WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

Senate Bill 335

BY SENATORS KARNES, WELD, BOSO, BLAIR, RUCKER,
CLINE, AND Ferns

[Introduced January 22, 2018; Referred
to the Committee on the Judiciary]
A BILL to amend and reenact §3-8-12 of the Code of West Virginia, 1931, as amended; to amend and reenact §21-1A-4 of said code; and to amend and reenact §21-5-1 and §21-5-3 of said code, all relating to withholding or diverting an employee’s wages or salary; prohibiting any person from coercing or intimidating any employee into making a political contribution or engaging in any form of political activity; prohibiting employers and any other persons responsible for the disbursement of wages and salaries from withholding or diverting any portion of an employee’s wages or salary for political activities without express, written authorization; providing that the prohibition against withholding or diverting wages for political activities applies to any written or oral contract or agreement entered into, modified, renewed, or extended on or after July 1, 2018, and shall not otherwise apply or abrogate a written or oral contract or agreement in effect on or before June 30, 2018; setting forth requirements for employees to provide written authorization for disbursement of wages and salaries by an employer or other person for political activities; defining the term “agency shop fees”; modifying definition of “deductions” to include only those amounts required by law or court order to be withheld and employer-sponsored or employer-provided plan; modifying the definition of “deductions” to exclude amounts for union or club dues, charities, and other withholdings that are not employer-sponsored or employer-provided plans; making it an unfair labor practice under the Labor-Management Relations Act for the Private Sector for a labor organization to use agency shop fees paid by nonmembers for political activities, unless expressly authorized by the individual; removing the requirement that an assignment or order be acknowledged by the party making the same before a notary public or other official authorized to take acknowledgments; requiring that an assignment or order shall be in writing; and providing that the changes made to the assignment of wages during the 2018 West Virginia Legislature apply to any written or oral contract or agreement entered into, modified,
renewed, or extended on or after July 1, 2018, and shall not otherwise apply or abrogate
a written or oral contract or agreement in effect on or before June 30, 2018.

Be it enacted by the Legislature of West Virginia:

CHAPTER 3. ELECTIONS.

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

§3-8-12. Additional acts forbidden; circulation of written matter; newspaper advertising;
solicitation of contributions; intimidation and coercion of employees; promise of
employment or other benefits; limitations on contributions; public contractors;
penalty.

(a) A person may not publish, issue or circulate, or cause to be published, issued or
circulated, any anonymous letter, circular, placard, radio or television advertisement or other
publication supporting or aiding the election or defeat of a clearly identified candidate.

(b) An owner, publisher, editor or employee of a newspaper or other periodical may not
insert, either in its advertising or reading columns, any matter, paid for or to be paid for, which
tends to influence the voting at any election, unless directly designating it as a paid advertisement
and stating the name of the person authorizing its publication and the candidate in whose behalf
it is published.

(c) A person may not, in any room or building occupied for the discharge of official duties
by any officer or employee of the state or a political subdivision of the state, solicit orally or by
written communication delivered within the room or building, or in any other manner, any
contribution of money or other thing of value for any party or political purpose, from any
postmaster or any other officer or employee of the federal government, or officer or employee of
the state, or a political subdivision of the state. An officer, agent, clerk or employee of the federal
government, or of this state, or any political subdivision of the state, who may have charge or
control of any building, office or room, occupied for any official purpose, may not knowingly permit
any person to enter any building, office or room, occupied for any official purpose for the purpose
of soliciting or receiving any political assessments from, or delivering or giving written solicitations
for, or any notice of, any political assessments to, any officer or employee of the state, or a political
subdivision of the state.

d) Except as provided in §3-8-8 of this code, a person entering into any contract with the
state or its subdivisions, or any department or agency of the state, either for rendition of personal
services or furnishing any material, supplies or equipment or selling any land or building to the
state, or its subdivisions, or any department or agency of the state, if payment for the performance
of the contract or payment for the material, supplies, equipment, land or building is to be made,
in whole or in part, from public funds may not, during the period of negotiation for or performance
under the contract or furnishing of materials, supplies, equipment, land or buildings, directly or
indirectly, make any contribution to any political party, committee or candidate for public office or
to any person for political purposes or use; nor may any person or firm solicit any contributions
for any purpose during any period.

e) A person may not, directly or indirectly, promise any employment, position, work,
compensation or other benefit provided for, or made possible, in whole or in part, by act of the
Legislature, to any person as consideration, favor or reward for any political activity for the support
of or opposition to any candidate, or any political party in any election.

f) Except as provided in §3-8-8 of this code, a person may not, directly or indirectly, make
any contribution in excess of the value of $1,000 in connection with any campaign for nomination
or election to or on behalf of any statewide office, in connection with any other campaign for
nomination or election to or on behalf of any other elective office in the state or any of its
subdivisions, or in connection with or on behalf of any person engaged in furthering, advancing,
supporting or aiding the nomination or election of any candidate for any of the offices.

(g) A political organization (as defined in Section 527(e)(1) of the Internal Revenue Code
of 1986) may not solicit or accept contributions until it has notified the Secretary of State of its
existence and of the purposes for which it was formed. During the two-year election cycle, a
political organization (as defined in Section 527 (e) (1) of the Internal Revenue Code of 1986) may not accept contributions totaling more than $1,000 from any one person prior to the primary election and contributions totaling more than $1,000 from any one person after the primary and before the general election.

(h) It is unlawful for any person to create, establish or organize more than one political organization (as defined in Section 527(e)(1) of the Internal Revenue Code of 1986) with the intent to avoid or evade the contribution limitations contained in subsection (g) of this section.

(i) Notwithstanding the provisions of subsection (f) of this section to the contrary, a person may not, directly or indirectly, make contributions to a state party executive committee or state party legislative caucus committee which, in the aggregate, exceed the value of $1,000 in any calendar year.

(j) The limitations on contributions contained in this section do not apply to transfers between and among a state party executive committee or a state party’s legislative caucus political committee from national committees of the same political party: *Provided, That* transfers permitted by this subsection may not exceed $50,000 in the aggregate in any calendar year to any state party executive committee or state party legislative caucus political committee: *Provided, however, That* the moneys transferred may only be used for voter registration and get-out-the-vote activities of the state committees.

(k) A person may not solicit any contribution, other than contributions to a campaign for or against a county or local government ballot issue, from any nonelective salaried employee of the state government or of any of its subdivisions: *Provided, That* in no event may any person acting in a supervisory role solicit a person who is a subordinate employee for any contribution.

(l) A person may not coerce or intimidate any nonelective salaried employee into making a contribution. A person may not coerce or intimidate any nonsalaried employee of the state government or its subdivisions into engaging in any form of political activity. The provisions of this subsection may not be construed to prevent any employee from making a contribution or from
engaging in political activity voluntarily without coercion, or intimidation or solicitation.

**(l)** *(m)* A person may not solicit a contribution from any other person without informing the other person at the time of the solicitation of the amount of any commission, remuneration or other compensation that the solicitor or any other person will receive or expect to receive as a direct result of the contribution being successfully collected. Nothing in this subsection may be construed to apply to solicitations of contributions made by any person serving as an unpaid volunteer.

**(m)** *(n)* A person may not place any letter, circular, flyer, advertisement, election paraphernalia, solicitation material or other printed or published item tending to influence voting at any election in a roadside receptacle unless it is: (1) Approved for placement into a roadside receptacle by the business or entity owning the receptacle; and (2) contains a written acknowledgment of the approval. This subdivision does not apply to any printed material contained in a newspaper or periodical published or distributed by the owner of the receptacle. The term “roadside receptacle” means any container placed by a newspaper or periodical business or entity to facilitate home or personal delivery of a designated newspaper or periodical to its customers.

**(n)** *(o)* An employer or any other person or entity responsible for the disbursement of funds in payment of wages or salary may not withhold or divert any portion of an employee’s wages or salary for use as contributions to any candidate or political committee or for any other political purposes as defined in §3-8-1a of this code except by a written assignment in accordance with §21-5-3 of this code. This subsection applies to any written or oral contract or agreement entered into, modified, renewed or extended on or after July 1, 2018: *Provided,* That the provisions of this subsection shall not otherwise apply to or abrogate a written or oral contract or agreement or any provisions thereof in effect on or before June 30, 2018: *Provided, however,* That a violation of this subsection is not subject to the civil and criminal penalties contained in this section, but any such violation shall be governed by the provisions of §21-5-1 *et seq.* of this code.
Any person violating any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000, or confined in jail for not more than one year, or, both fined and confined.

The provisions of subsection (k) of this section, permitting contributions to a campaign for or against a county or local government ballot issue shall become operable on and after January 1, 2005.

The limitations on contributions established by subsection (g) of this section do not apply to contributions made for the purpose of supporting or opposing a ballot issue, including a constitutional amendment.

CHAPTER 21. LABOR.

ARTICLE 1A. LABOR-MANAGEMENT RELATIONS ACT FOR THE PRIVATE SECTOR.

§21-1A-4. Unfair labor practices.

(a) It shall be an unfair labor practice for an employer:

(1) To interfere with, restrain or coerce employees in the exercise of the rights guaranteed in §21-1A-3 of this code;

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: Provided, That an employer shall not be prohibited from permitting employees to confer with him or her during working hours without loss of time or pay;

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment, to encourage or discourage membership in any labor organization;

(4) To discharge or otherwise discriminate against an employee because he or she has filed charges or given testimony under this article; and

(5) To refuse to bargain collectively with the representatives of his or her employees,
subject to the provisions of §21-1A-5(a) of this code.

(b) It shall be an unfair labor practice for a labor organization or its agents:

(1) To restrain or coerce: (A) Employees in the exercise of the rights guaranteed in §21-1A-3 of this code: Provided, That this subdivision shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his or her representatives for the purposes of collective bargaining or the adjustment of grievances;

(2) To cause or attempt to cause an employer to discriminate against an employee in violation of subdivision (3), subsection (a) of this section or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his or her failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

(3) To refuse to bargain collectively with an employer, provided it is the representative of his or her employees subject to the provisions of §21-1A-5(a) of this code;

(4) (i) To engage in, or induce or encourage any individual employed by any person to engage in, a strike or a refusal in the course of employment to use, manufacture, process, transport or otherwise handle or work on any goods, articles, materials or commodities or to perform any services; or (ii) to threaten, coerce or restrain any person, where in either case an object thereof is:

(A) Forcing or requiring any employer or self-employed person to join any labor or employer organization or to enter into any agreement which is prohibited by subsection (e) of this section;

(B) Forcing or requiring any person to cease using, selling, handling, transporting or otherwise dealing in the products of any other producer, processor or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his or her employees unless such labor
organization has been certified as the representative of such employees under the provisions of §21-1A-5 of this code: *Provided, That nothing contained in this paragraph may be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;*

(C) Forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his or her employees if another labor organization has been certified as the representative of such employees under the provisions of §21-1A-5 of this code;

(D) Forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft or class rather than to employees in another labor organization or in another trade, craft or class, unless such employer is failing to conform to an order of certification of the board determining the bargaining representative for employees performing such work: *Provided, That nothing contained in this subsection shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his or her own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required by law to recognize;*

(5) To require of employees covered by an agreement authorized under subdivision (3), subsection (a) of this section, the payment, as a condition precedent to becoming a member of such organization, of a fee in an amount which the board finds excessive or discriminatory under all the circumstances. In making such a finding, the board shall consider, among other relevant factors, the practices and customs of labor organizations in the particular industry, and the wages currently paid to the employees affected;

(6) To cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed; and

(7) To picket or cause to be picketed, or threaten to picket or cause to be picketed, any employer where an object thereof is forcing or requiring an employer to recognize or bargain with
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a labor organization as the representative of his or her employees, or forcing or requiring the employees of an employer to accept or select such labor organization as their collective bargaining representative, unless such labor organization is currently certified as the representative of such employees:

(A) Where the employer has lawfully recognized in accordance with this article any other labor organization and a question concerning representation may not appropriately be raised under §21-1A-5(c) of this code;

(B) Where within the preceding twelve months a valid election under §21-1A-5(c) of this code has been conducted; or

(C) Where such picketing has been conducted without a petition under §21-1A-5(c) of this code being filed within a reasonable period of time not to exceed fifteen days from the commencement of such picketing: Provided, That when such a petition has been filed the board shall forthwith, without regard to the provisions of said subsection or the absence of a showing of a substantial interest on the part of the labor organization, direct an election in such unit as the board finds to be appropriate and shall certify the results thereof. Nothing in this subdivision shall be construed to permit any act which would otherwise be an unfair labor practice under this subsection.

(c) The expressing of any views, argument or opinion, or the dissemination thereof, whether in written, printed, graphic or visual form, shall not constitute or be evidence of an unfair labor practice, or be prohibited under this article, if such expression contains no threat of reprisal or force or promise of benefit.

(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party,
but such obligation does not compel either party to agree to a proposal or require the making a concession: Provided, That where there is in effect a collective bargaining contract covering employees, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification:

(1) Gives a written notice to the other party of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

(2) Offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

(3) Notifies the Commissioner of Labor of the existence of a dispute;

(4) Continues in full force and effect, without resorting to strike or lockout, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later. The duties imposed upon employers, employees and labor organizations by this subdivision and subdivisions (2) and (3) of this subsection shall become inapplicable upon an intervening certification of the board, under which the labor organization or individual, which is a party to the contract, has been superseded as or ceased to be the representative of the employees subject to the provisions of §21-1A-5 of this code, and the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract. Any employee who engages in a strike within the sixty-day period specified in this subsection shall lose his or her status as an employee of the employer engaged in the particular labor dispute, for the purposes of this section and §21-1A-3 and §21-1A-5 of this code, but such loss of status for such employee shall terminate if and when he or she is reemployed by such employer.

(e) It shall be an unfair labor practice for any labor organization and any employer to enter
into any contract or agreement, express or implied, whereby such employer ceases or refrains or
agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any
of the products of any other employer, or to cease doing business with any other person and any
such contract or agreement entered into heretofore or hereafter shall be to such extent
unenforceable and void.

(f) It shall be an unfair labor practice for any labor organization to use agency shop fees
paid by an individual who is not a member of the organization to make any contributions or
expenditures to influence an election or to operate a political committee, unless affirmatively
authorized by the individual. Any such authorization is valid for no more than 12 months from the
date it is made by the individual. For purposes of this section, “agency shop fees” shall mean any
dues, fees, assessments, or other similar charges, however denominated, of any kind or amount
to the labor organization: Provided, That the provisions of this subsection shall not otherwise
apply to or abrogate a written or oral contract or agreement or any provisions thereof in effect on
or before June 30, 2018.

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

§21-5-1. Definitions.

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 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.

As used in §21-5-4, §21-5-5, §21-5-8a, §21-5-10, and §21-5-12 of this code, 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 or her employees which does not contradict the provisions of this article.

(d) The term “commissioner” means Commissioner of Labor or his or her 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 only those amounts required by law or court order to be withheld, and those amounts authorized for union or club dues, pension plans, payroll savings plans, credit unions, charities and hospitalization and medical insurance required by the terms of an employer-sponsored or employer-provided plan or program providing fringe benefits in which the employee is a participant.

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

(i) The term “wages due” shall include at least all wages earned up to and including the twelfth 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 but is not limited to, benefits provided pursuant to any welfare plan or pension plan, subject to the Employee Retirement Income Security Act of 1974 in which the employee is a participant, including, but not limited to, benefits for medical, surgical, or hospital care, sickness, accident, disability or death, unemployment, vacation, holidays, apprenticeship or training, day-care, education, prepaid legal services, severance and retirement or post retirement.

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

(n) The term “doing business in this state” means having employees actively engaged in the intended principal activity of the person, firm or corporation in West Virginia.

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

(a) Every person, firm or corporation doing business in this state, except railroad companies as provided in §21-5-1 of this code, shall settle with its employees at least twice every month and with no more than nineteen days between settlements, unless otherwise provided by special agreement, and pay them the wages due, less authorized deductions and authorized wage assignments, for their work or services.

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

(1) In lawful money of the United States;

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

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

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

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

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

(e) No assignment of or order for future wages shall be valid for a period exceeding one year from the date of the assignment or order. An assignment or order shall be acknowledged by the party making the same before a notary public or other officer authorized to take acknowledgments, and any order or assignment shall in writing and specify thereon the total amount due and collectible by virtue of the same and three fourths of the periodical earnings or wages of the assignor shall at all times be exempt from such assignment or order and no
assignment or order shall be valid which does not so state upon its face: Provided, That no such order or assignment shall be valid unless the written acceptance of the employer of the assignor to the making thereof is endorsed thereon. Provided, however, That nothing herein contained shall be construed as affecting the right of employer and employees to agree between themselves as to deductions to be made from the payroll of employees. The changes to this section which were adopted by the West Virginia Legislature in 2018 apply to any written or oral contract or agreement entered into, modified, renewed or extended on or after July 1, 2018: Provided, however, That the provisions of this subsection shall not otherwise apply to or abrogate a written or oral contract or agreement or any provisions thereof in effect on or before June 30, 2018.

NOTE: The purpose of this bill is to protect an employee’s wages or salaries from being withheld or diverted for political activities without the express, written authorization of the employee. The bill makes clear that it is unlawful for any person to coerce or intimidate any employee into making a political contribution or engaging in political activities. The bill also makes it an unfair labor practice for any labor organization to use agency shop fees paid for by nonmembers for contributions or expenditures to influence an election without the authorization of the individual.

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