

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

House Bill 4368

BY DELEGATES WESTFALL, FRICH AND LANE

[Introduced January 31, 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; removing
 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 without restriction or exemption of wages: *Provided*, That
48 an employee's authorization is voluntary, and the written authorization contains an express
49 acknowledgement and waiver by the employee of the right to exempt three-fourths of the
50 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.