WEST virginia legislature

2021 regular session

ENROLLED

Committee Substitute

for

House Bill 2009

By Delegates Foster, Burkhammer, Kimes, Higginbotham, Forsht, Keaton, Espinosa and Pritt

[Passed March 19, 2021; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended by adding thereto a new section, designated §7-5-25; to amend and reenact §8-5-12 of said code; to amend and reenact §12-3-13b of said code; to amend and reenact §18A-4-9 of said code; to amend and reenact §21-5-1 and §21-5-3 of said code; and to amend and reenact §46A-2-116 of said code, all relating generally to deductions from wages; defining terms under the Wage Payment and Collection Act; including union, labor organization, or club dues or fees as deductions; expanding types of insurance considered as deductions; prohibiting deduction of union, labor organization, or club dues or fees from wages of public employees; providing an exception for certain municipal employees; incorporating definition of “assignment of earnings” from Consumer Credit and Protection Act into Wage Payment and Collection Act; replacing notarization requirement for assignments or orders for future wages with requirement that such assignments or orders be in writing; protecting right of private employers and their employees to agree between themselves as to payroll deductions; protecting right of employees to participate in unions, labor organizations, and clubs; excluding union, labor organization, or club dues or fees from definition of “assignment of earnings” in the Consumer Credit Protection Act; expanding types of insurance excluded from assignments; prohibiting deductions and assignments of earnings for union, labor organization, or club dues or fees from the compensation of county officers and employees; prohibiting deductions and assignments of earnings for union, labor organization, or club dues or fees from the compensation of certain municipal officers or employees; eliminating voluntary deductions from net wages of state officers and employees for payment of membership dues or fees to employee organizations; prohibiting deductions and assignments of earnings for union, labor organization, or club dues or fees from the compensation of state officers and employees; and prohibiting deductions and assignments of earnings for union, labor organization, or club dues or fees from the compensation of teachers and other school employees.

Be it enacted by the Legislature of West Virginia:

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 5. FISCAL AFFAIRS.

§7-5-25. Prohibition against certain deductions and assignments of earnings from compensation of county officers or employees.

No deductions or assignments of earnings shall be allowed for union, labor organization, or club dues or fees from the compensation of county officers and employees.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 5. ELECTION, APPOINTMENT, QUALIFICATION AND COMPENSATION OF OFFICERS; GENERAL PROVISIONS RELATING TO OFFICERS AND EMPLOYEES; ELECTIONS AND PETITIONS GENERALLY; CONFLICT OF INTEREST.

§8-5-12. Compensation of officers and employees.

(a) Notwithstanding any charter provision to the contrary, the governing body of every municipality shall by ordinance fix or cause to be fixed the salary or compensation of every municipal officer and employee: *Provided,* That the salary of any officer shall not be increased or diminished during his or her term.

(b) The governing body of every municipality shall have plenary power and authority to provide by ordinance for the allowance of time off of officers and employees with pay for vacations and illness and for personnel management incentives, as additional consideration for their services and employment.

(c) No deductions or assignments of earnings shall be allowed for union, labor organization, or club dues or fees from the compensation of officers or employees covered by this section: *Provided,* That this subsection shall not apply to municipal employees covered by a collective bargaining agreement with a municipality which is in effect on July 1, 2021.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 3. APPROPRIATIONS, EXPENDITURES, AND DEDUCTIONS.

§12-3-13b. Voluntary deductions by State Auditor from salaries of employees to pay supplemental health and life insurance premiums; voluntary other deductions.

(a) Any officer or employee of the State of West Virginia may authorize that a voluntary deduction from his or her net wages be made for any supplemental health and life insurance premium, subject to prior approval by the Auditor. Such deductions shall be authorized on a form provided by the Auditor of the State of West Virginia and shall state:

(1) The identity of the employee;

(2) The amount and frequency of such deductions; and

(3) The identity and address of the insurance company to which such dues shall be paid.

(b) Upon execution of such authorization and its receipt by the office of the Auditor, such deductions shall be made in the manner specified on the form and remitted to the designated insurance company on the tenth day of each month: *Provided,* That the Auditor may approve and authorize voluntary other deductions, as defined under §21-5-1 of this code, to be made in accordance with rules proposed by the Auditor pursuant to §29A-3-1 *et seq.* of this code: *Provided, however,* That deductions shall be made at least twice monthly. Deduction authorizations may be revoked at any time 30 days prior to the date on which the deduction is regularly made and on a form to be provided by the office of the State Auditor.

(c) No deductions or assignments of earnings shall be allowed for union, labor organization, or club dues or fees from the compensation of officers and employees covered by this section.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

**§18A-4-9. Payment of teachers and other employees; withholdings.**

Teachers and all other employees whose salaries or wages are payable out of the school current fund shall be paid for their services by orders duly signed by the president and secretary of the board in accordance with the following provisions:

(1) Notwithstanding any other provisions of this chapter and §18-1-1 *et seq.* of this code, the number of pays to be made during the school year to the various classes of employees shall be determined by the board: *Provided,* That the sum of such pays for any employee does not exceed the equivalent of an annual salary based upon 12 calendar months.

(2) In the event a teacher or other employee is not paid the full salary or wage earned in the fiscal year in which the work is performed, the unpaid amount may be paid during July and August of the following fiscal year.

(3) Adjustments for time loss due to absence may be made in the next paycheck following such time loss.

(4) The county board may withhold the pay of any teacher or employee until he or she has made the reports required by the board or the state superintendent.

(5) Accompanying the pay of each employee shall be an accounting of gross earnings, all withholdings, and the dollar value of all benefits provided by the state on behalf of the employee.

(6) No deductions or assignments of earnings shall be allowed for union, labor organization, or club dues or fees from the compensation of teachers and other employees covered by this section.

chapter 21. labor.

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, except those classified as an independent contractor pursuant to §21-5I-4 of this code.

(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 amounts required by law to be withheld, and amounts authorized for union, labor organization, or club dues or fees, pension plans, payroll savings plans, credit unions, charities, and any form of insurance offered by an employer: *Provided*, That for a public employee, other than a municipal employee covered by a collective bargaining agreement with a municipality which is in effect on July 1, 2021, the term “deductions” shall not include any amount for union, labor organization, or club dues or fees.

(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.

(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.

(o) The term “assignment”, as used in §21-5-3 of this code, shall have the same meaning as the term “assignment of earnings” set forth in §46A-2-116(2)(b) of this code.

**§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 19 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 person 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, firm, 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 is absent from his or her regular place of labor and does not receive his or her wages through a duly authorized representative, he or she is 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 may 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 may be valid for a period exceeding one year from the date of the assignment or order. An assignment or order shall be in writing and shall specify thereon the total amount due and collectible by virtue of the same and, unless otherwise provided for in subsection (f) of this section, three-fourths of the periodical earnings or wages of the assignor are all times exempt from such assignment or order and no assignment or order is valid which does not so state upon its face: *Provided*, That no such order or assignment is valid unless the written acceptance of the employer of the assignor to the making thereof is endorsed thereon: *Provided, however*, That nothing herein contained may be construed as affecting the right of a private employer and its employees to agree between themselves as to deductions to be made from the payroll of employees.

(f) If an employee of the state has been overpaid wages, including incremental salary increases pursuant to §5-5-2 of this code, an employee may voluntarily authorize a written assignment or order for future wages to the state to repay the overpayment in an amount not to exceed three-fourths of his or her periodical earnings or wages.

(g) Nothing in this chapter shall be construed to interfere with the right of an employee to join, become a member of, contribute to, donate to, or pay dues or fees to a union, labor organization, or club.

CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT.

ARTICLE 2. CONSUMER CREDIT PROTECTION.

**§46A-2-116. Assignment of earnings.**

(1) The maximum part of the aggregate disposable earnings of an individual for any workweek which may be subjected to any one or more assignments of earnings for the payment of a debt or debts arising from one or more consumer credit sales, consumer leases, or consumer loans, or one or more sales as defined in §46A-6-102 of this code, may not exceed 25 percent of his or her disposable earnings for that week.

(2) As used in this section:

(a) “Disposable earnings” means that part of the earnings of an individual remaining after the deduction from those earnings of amounts required by law to be withheld; and

(b) “Assignment of earnings” includes all forms of assignments, deductions, transfers, or sales of earnings to another, either as payment or as security, and whether stated to be revocable or nonrevocable, and includes any deductions authorized under the provisions of §21-5-3 of this code, except deductions for union, labor organization, or club dues or fees, pension plans, payroll savings plans, charities, stock purchase plans, and any form of insurance offered by an employer.

(3) Any assignment of earnings and any deduction under §21-5-3 of this code shall be revocable by the employee at will at any time, notwithstanding any provision to the contrary.

(4) The priority of multiple assignments of earnings shall be according to the date and time of each such assignment.

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

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*Chairman, House Committee*

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*Chairman, Senate Committee*

Originating in the House.

In effect ninety days from passage.

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*Clerk of the House of Delegates*

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*Clerk of the Senate*

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*Speaker of the House of Delegates*

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*President of the Senate*

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day of ..........................................................................................................., 2021.

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*Governor*