

# **West Virginia Legislature**

## **Senate Bill 245 History**

**From the 2022 Regular Session**

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This document contains all available Bill revisions, roll-call votes and amendments pertaining to the legislation.

# **WEST VIRGINIA LEGISLATURE**

**2022 REGULAR SESSION**

**ENROLLED**

**Committee Substitute**

**for**

**Senate Bill 245**

BY SENATORS TRUMP AND WOELFEL

[Passed March 11, 2022; in effect 90 days from passage]



1 AN ACT to amend and reenact §21-5-3 and §21-5-4 of the Code of West Virginia, 1931, as  
2 amended, all relating to wage payment; setting forth methods for employer payment of  
3 wages; eliminating the requirements that wage payment by payroll card and direct deposit  
4 be agreed upon in writing by both payor and payee; requiring an employer paying wages  
5 by payroll card to disclose certain information to employees; and requiring an employer  
6 paying wages by payroll card to ensure that an employee can make a single withdrawal  
7 per pay period without cost to the employee.

*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 §21-5-1 *et seq.* of this code, shall settle with its employees at least  
3 twice every month in a manner of the person, firm, or corporation's choosing, as set forth in  
4 subsection (b) of this section, and with no more than 19 days between settlements, unless  
5 otherwise provided by special agreement, and pay them the wages due, less authorized  
6 deductions and authorized wage assignments, for their work or services.

7 (b) Payment required in subsection (a) of this section shall be made by the person, firm,  
8 or corporation in one of the following ways:

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

10 (2) By check or money order;

11 (3) By deposit or electronic transfer of immediately available funds into an employee's  
12 payroll card account in a federally insured depository institution: *Provided*, That an employer who  
13 compensates its employees using payroll cards shall provide full written disclosure of any  
14 applicable fees associated with the payroll card: *Provided, however*, That if an employer  
15 compensates its employees using payroll cards, the employer shall ensure that the employee has  
16 the ability to make at least one withdrawal or transfer from the payroll card per pay period without

17 cost or fee to the employee for any amount contained on the card: *Provided further*, That if an  
18 employer compensates its employees using payroll cards, the employer shall ensure that the  
19 employee has the ability to make in-network withdrawals or transfers from the payroll card without  
20 cost or fee to the employee for any amount contained on the card.

21 (4) By any method of depositing immediately available funds in an employee's demand or  
22 time account in a bank, credit union, or savings and loan institution upon the employee's  
23 identification of his or her financial institution, the type of account, and the account number:  
24 *Provided*, That if an employee does not identify the information necessary to enable a deposit  
25 pursuant to this subdivision, the employer may pay the employee by payroll card pursuant to  
26 subdivision (3) of this subsection: *Provided, however*, That nothing herein contained shall be  
27 construed in a manner to require any person, firm, or corporation to pay employees by depositing  
28 funds in a financial institution.

29 (c) An employer who chooses to compensate its employees using payroll cards pursuant  
30 to the provisions of subsection (b)(3) of this section must also give employees the option of being  
31 paid by electronic transfer under the provisions of subsection (b)(4) of this section.

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

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

38 (f) No assignment of or order for future wages may be valid for a period exceeding one  
39 year from the date of the assignment or order. An assignment or order shall be in writing and shall  
40 specify thereon the total amount due and collectible by virtue of the same and, unless otherwise  
41 provided for in subsection (g) of this section, three-fourths of the periodical earnings or wages of  
42 the assignor are all times exempt from such assignment or order and no assignment or order is

43 valid which does not so state upon its face: *Provided*, That no such order or assignment is valid  
44 unless the written acceptance of the employer of the assignor to the making thereof is endorsed  
45 thereon: *Provided, however*, That nothing herein contained may be construed as affecting the  
46 right of a private employer and its employees to agree between themselves as to deductions to  
47 be made from the payroll of employees.

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

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

55 (i) For purposes of this article:

56 (1) "Payroll card" means a card, code, or combination thereof or other means of access to  
57 an employee's payroll card account, by which the employee may initiate electronic fund transfers  
58 or use a payroll card to make purchases or payments.

59 (2) "Payroll card account" means an account in a federally insured depository institution  
60 that is directly or indirectly established through an employer and to which electronic fund transfers  
61 of the employee's wages, salary, commissions, or other compensation are made on a recurring  
62 basis, whether the account is operated or managed by the employer, a third person payroll  
63 processor, a depository institution, or another person.

**§21-5-4. Cash orders; employees separated from payroll before paydays; employer provided property.**

1 (a) In lieu of lawful money of the United States, any person, firm, or corporation may  
2 compensate employees for services by cash order which may include checks, direct deposits,  
3 payroll cards, or money orders on banks convenient to the place of employment where suitable

4 arrangements have been made for the cashing of the checks by employees or deposit of funds  
5 for employees for the full amount of wages.

6 (b) Whenever a person, firm, or corporation discharges an employee, or whenever an  
7 employee quits or resigns from employment, the person, firm or corporation shall pay the  
8 employee's wages due for work that the employee performed prior to the separation of  
9 employment on or before the next regular payday on which the wages would otherwise be due  
10 and payable: *Provided*, That fringe benefits, as defined in section one of this article, that are  
11 provided an employee pursuant to an agreement between the employee and employer and that  
12 are due, but pursuant to the terms of the agreement, are to be paid at a future date or upon  
13 additional conditions which are ascertainable are not subject to this subsection and are not  
14 payable on or before the next regular payday, but shall be paid according to the terms of the  
15 agreement. For purposes of this section, "business day" means any day other than Saturday,  
16 Sunday, or any legal holiday as set forth in §2-2-1 of this code.

17 (c) Payment under this section may be made in person in any manner permissible under  
18 section three of this article, through the regular pay channels or, if requested by the employee, by  
19 mail. If the employee requests that payment under this section be made by mail, that payment  
20 shall be considered to have been made on the date the mailed payment is postmarked.

21 (d) When work of any employee is suspended as a result of a labor dispute, or when an  
22 employee for any reason whatsoever is laid off, the person, firm or corporation shall pay in full to  
23 the employee not later than the next regular payday, either through the regular pay channels or  
24 by mail if requested by the employee, wages earned at the time of suspension or layoff.

25 (e) If a person, firm, or corporation fails to pay an employee wages as required under this  
26 section, the person, firm, or corporation, in addition to the amount which was unpaid when due,  
27 is liable to the employee for two times that unpaid amount as liquidated damages. This section  
28 regulates the timing of wage payments upon separation from employment and not whether  
29 overtime pay is due. Liquidated damages that can be awarded under this section are not available

30 to employees claiming they were misclassified as exempt from overtime under state and federal  
31 wage and hour laws. Every employee shall have a lien and all other rights and remedies for the  
32 protection and enforcement of his or her salary or wages, as he or she would have been entitled  
33 to had he or she rendered service therefor in the manner as last employed; except that, for the  
34 purpose of liquidated damages, the failure shall not be deemed to continue after the date of the  
35 filing of a petition in bankruptcy with respect to the employer if he or she is adjudicated bankrupt  
36 upon the petition.

37 (f)(1) Notwithstanding any provision in this section to the contrary, if at the time of  
38 discharge or resignation, an employee fails to return employer provided property, as set forth by  
39 the parties under paragraph (C) of this subsection, the employer may withhold, deduct, or divert  
40 an employee's final wages, in an amount not to exceed the replacement cost of the employer  
41 provided property that was not returned as set forth under paragraph (C) of this subsection, to  
42 recover the replacement cost of the employer provided property, subject to the following:

43 (A) The employer provided property had been provided to the employee in the course of,  
44 and for use in, the employer's business;

45 (B) The employer provided property has a value in excess of \$100;

46 (C) The employee had signed a written agreement with the employer contemporaneous  
47 with the obtaining of the employer provided property, or signed and ratified an agreement if  
48 property had been provided prior to the effective date of this provision; and such agreement  
49 contained, at a minimum, the following information:

50 (i) Specific itemization of the employer provided property, with a specified replacement  
51 cost;

52 (ii) Clear statement that such items are to be returned immediately upon discharge or  
53 resignation; and



54 (iii) Clear statement, coupled with the employee's acknowledgement and agreement, that  
55 should the employee fail to timely return the specified items, the replacement cost of such items  
56 may be recovered by the employer from the employee's final wages;

57 (D) The employer shall notify the employee in writing at the time of discharge or resignation  
58 by personal service, or as soon thereafter as practicable by personal service or via certified mail  
59 with return receipt requested, as to the replacement cost of the items and make a demand for  
60 return of such employer provided property within a certain date, not to exceed 10 business days  
61 of the notification; and

62 (E) The employer shall relinquish the withheld, deducted, or diverted wages to the  
63 employee if the employee returns the employer's property, equipment, supplies, and uniforms in  
64 a condition suitable for the age and usage of the items within the deadline specified in paragraph  
65 (D) of this subsection: *Provided*, That uniforms returned to the employer within three years of their  
66 issuance shall be deemed acceptable in their current condition at the time of separation from  
67 employment for purposes of this section: *Provided, however*, That replacement tools are deemed  
68 to be the property of the employee and are not subject to the provisions of this section.

69 (2) Nothing herein precludes an employee from voluntarily consenting in writing to an  
70 employer's withholding, deduction, or diversion of a certain amount from the employee's final  
71 wages in satisfaction of subsection (1) of this section.

72 (3) If an employee objects to the replacement cost amount to be deducted by an employer,  
73 and provides such written objection within the deadline specified in paragraph (D), subsection (1)  
74 of this subsection, then the employer shall place the controverted amount in an interest bearing  
75 escrow account: *Provided*, That if a civil action or equitable relief is not brought by the employee  
76 for the claimed amount within three months, the employee shall forfeit the amount in escrow and  
77 such money shall revert to the employer.

78 (4) Nothing in this subsection is intended, nor shall it be construed, to abolish or limit any  
79 other remedies available to an employer to recover employer provided property, damages related

80 to employer provided property or any other damages or relief, equitable or otherwise, available  
81 under any applicable law.

82 (5) Notwithstanding any provision in this section to the contrary, this provision shall not  
83 apply to employer-employee business relationships that are subject to, and governed by,  
84 collective bargaining agreements.

85 (6) For purposes of this section the following terms mean:

86 (A) The term “employer provided property” means all property provided by an employer to  
87 an employee for use in the employer’s business, including but not limited to, equipment, phone,  
88 computer, supplies, or uniforms.

89 (B) The term “replacement cost” means actual cost paid by an employer for employer  
90 provided property, or for the same or similar property, if the original employer provided property  
91 no longer exists. In calculating the “replacement cost”, the cost shall include any vendor discounts  
92 provided to the employer for such property.

93 (C) The term “replacement tools” means equipment, other than uniforms, provided by the  
94 employer to the employee for use in the course of the employer’s business and to replace  
95 equipment provided by the employee that is lost.



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

.....  
*Chairman, Senate Committee*

.....  
*Chairman, House Committee*

Originated in the Senate.

In effect 90 days from passage.

.....  
*Clerk of the Senate*

.....  
*Clerk of the House of Delegates*

.....  
*President of the Senate*

.....  
*Speaker of the House of Delegates*

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The within ..... this the.....  
Day of ....., 2022.

.....  
*Governor*

# **WEST VIRGINIA LEGISLATURE**

**2022 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 245**

BY SENATORS TRUMP AND WOELFEL

[Originating in the Committee on Judiciary; reported  
on February 3, 2022]

1 A BILL to amend and reenact §21-5-3 and §21-5-4 of the Code of West Virginia, 1931, as  
2 amended, all relating to wage payment; setting forth methods for employer payment of  
3 wages; eliminating the requirements that wage payment by payroll card and direct deposit  
4 be agreed upon in writing by both payor and payee; requiring an employer paying wages  
5 by payroll card to disclose certain information to employees; and requiring an employer  
6 paying wages by payroll card to ensure that an employee can make a single withdrawal  
7 per pay period without cost to the employee.

*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 §21-5-1 *et seq.* of this code, shall settle with its employees at least  
3 twice every month in a manner of the person, firm, or corporation's choosing, as set forth in  
4 subsection (b) of this section, and with no more than 19 days between settlements, unless  
5 otherwise provided by special agreement, and pay them the wages due, less authorized  
6 deductions and authorized wage assignments, for their work or services.

7 (b) Payment required in subsection (a) of this section shall be made by the person, firm,  
8 or corporation in one of the following ways:

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

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

11 (3) By deposit or electronic transfer of immediately available funds into an employee's  
12 payroll card account in a federally insured depository institution: Provided, That ~~The term "payroll~~  
13 ~~card account" means an account in a federally insured depository institution that is directly or~~  
14 ~~indirectly established through an employer and to which electronic fund transfers of the~~  
15 ~~employee's wages, salary, commissions, or other compensation are made on a recurring basis,~~  
16 ~~whether the account is operated or managed by the employer, a third person payroll processor,~~

17 ~~a depository institution, or another person. "Payroll card" means a card, code, or combination~~  
18 ~~thereof or other means of access to an employee's payroll card account, by which the employee~~  
19 ~~may initiate electronic fund transfers or use a payroll card to make purchases or payments.~~  
20 ~~Payment of employee compensation by means of a payroll card must be agreed upon in writing~~  
21 ~~by both the person, firm, or corporation paying the compensation and the person being~~  
22 ~~compensated~~ an employer who compensates its employees using payroll cards shall provide full  
23 written disclosure of any applicable fees associated with the payroll card: *Provided, however, That*  
24 if an employer compensates its employees using payroll cards, the employer shall ensure that  
25 the employee has the ability to make at least one withdrawal or transfer from the payroll card per  
26 pay period without cost or fee to the employee for any amount contained on the card: *Provided*  
27 *further, That* if an employer compensates its employees using payroll cards, the employer shall  
28 ensure that the employee has the ability to make in-network withdrawals or transfers from the  
29 payroll card without cost or fee to the employee for any amount contained on the card.

30 (4) By any method of depositing immediately available funds in an employee's demand or  
31 time account in a bank, credit union, or savings and loan institution ~~that may be agreed upon in~~  
32 ~~writing between the employee and such person, firm, or corporation, which agreement shall~~  
33 ~~specifically identify the employee, the~~ upon the employee's identification of his or her financial  
34 institution, the type of account, and the account number: *Provided, That if an employee does not*  
35 identify the information necessary to enable a deposit pursuant to this subdivision, the employer  
36 may pay the employee by payroll card pursuant to subdivision (3) of this subsection: *Provided,*  
37 *however,* That nothing herein contained shall be construed in a manner to require any person,  
38 firm, or corporation to pay employees by depositing funds in a financial institution.

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

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

45 (e) No assignment of or order for future wages may be valid for a period exceeding one  
46 year from the date of the assignment or order. An assignment or order shall be in writing and shall  
47 specify thereon the total amount due and collectible by virtue of the same and, unless otherwise  
48 provided for in subsection (f) of this section, three-fourths of the periodical earnings or wages of  
49 the assignor are all times exempt from such assignment or order and no assignment or order is  
50 valid which does not so state upon its face: *Provided*, That no such order or assignment is valid  
51 unless the written acceptance of the employer of the assignor to the making thereof is endorsed  
52 thereon: *Provided, however*, That nothing herein contained may be construed as affecting the  
53 right of a private employer and its employees to agree between themselves as to deductions to  
54 be made from the payroll of employees.

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

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

62 (h) For purposes of this article:

63 (1) "Payroll card" means a card, code, or combination thereof or other means of access to  
64 an employee's payroll card account, by which the employee may initiate electronic fund transfers  
65 or use a payroll card to make purchases or payments.

66 (2) "Payroll card account" means an account in a federally insured depository institution  
67 that is directly or indirectly established through an employer and to which electronic fund transfers  
68 of the employee's wages, salary, commissions, or other compensation are made on a recurring



69 basis, whether the account is operated or managed by the employer, a third person payroll  
70 processor, a depository institution, or another person.

**§21-5-4. Cash orders; employees separated from payroll before paydays; employer provided property.**

1 (a) In lieu of lawful money of the United States, any person, firm, or corporation may  
2 compensate employees for services by cash order which may include checks, direct deposits,  
3 payroll cards, or money orders on banks convenient to the place of employment where suitable  
4 arrangements have been made for the cashing of the checks by employees or deposit of funds  
5 for employees for the full amount of wages.

6 (b) Whenever a person, firm, or corporation discharges an employee, or whenever an  
7 employee quits or resigns from employment, the person, firm or corporation shall pay the  
8 employee's wages due for work that the employee performed prior to the separation of  
9 employment on or before the next regular payday on which the wages would otherwise be due  
10 and payable: *Provided*, That fringe benefits, as defined in section one of this article, that are  
11 provided an employee pursuant to an agreement between the employee and employer and that  
12 are due, but pursuant to the terms of the agreement, are to be paid at a future date or upon  
13 additional conditions which are ascertainable are not subject to this subsection and are not  
14 payable on or before the next regular payday, but shall be paid according to the terms of the  
15 agreement. For purposes of this section, "business day" means any day other than Saturday,  
16 Sunday, or any legal holiday as set forth in §2-2-1 of this code.

17 (c) Payment under this section may be made in person in any manner permissible under  
18 section three of this article, through the regular pay channels or, if requested by the employee, by  
19 mail. If the employee requests that payment under this section be made by mail, that payment  
20 shall be considered to have been made on the date the mailed payment is postmarked.

21 (d) When work of any employee is suspended as a result of a labor dispute, or when an  
22 employee for any reason whatsoever is laid off, the person, firm or corporation shall pay in full to

23 the employee not later than the next regular payday, either through the regular pay channels or  
24 by mail if requested by the employee, wages earned at the time of suspension or layoff.

25 (e) If a person, firm, or corporation fails to pay an employee wages as required under this  
26 section, the person, firm, or corporation, in addition to the amount which was unpaid when due,  
27 is liable to the employee for two times that unpaid amount as liquidated damages. This section  
28 regulates the timing of wage payments upon separation from employment and not whether  
29 overtime pay is due. Liquidated damages that can be awarded under this section are not available  
30 to employees claiming they were misclassified as exempt from overtime under state and federal  
31 wage and hour laws. Every employee shall have a lien and all other rights and remedies for the  
32 protection and enforcement of his or her salary or wages, as he or she would have been entitled  
33 to had he or she rendered service therefor in the manner as last employed; except that, for the  
34 purpose of liquidated damages, the failure shall not be deemed to continue after the date of the  
35 filing of a petition in bankruptcy with respect to the employer if he or she is adjudicated bankrupt  
36 upon the petition.

37 (f)(1) Notwithstanding any provision in this section to the contrary, if at the time of  
38 discharge or resignation, an employee fails to return employer provided property, as set forth by  
39 the parties under paragraph (C) of this subsection, the employer may withhold, deduct, or divert  
40 an employee's final wages, in an amount not to exceed the replacement cost of the employer  
41 provided property that was not returned as set forth under paragraph (C) of this subsection, to  
42 recover the replacement cost of the employer provided property, subject to the following:

43 (A) The employer provided property had been provided to the employee in the course of,  
44 and for use in, the employer's business;

45 (B) The employer provided property has a value in excess of \$100;

46 (C) The employee had signed a written agreement with the employer contemporaneous  
47 with the obtaining of the employer provided property, or signed and ratified an agreement if  
48 property had been provided prior to the effective date of this provision; and such agreement

49 contained, at a minimum, the following information:

50 (i) Specific itemization of the employer provided property, with a specified replacement  
51 cost;

52 (ii) Clear statement that such items are to be returned immediately upon discharge or  
53 resignation; and

54 (iii) Clear statement, coupled with the employee's acknowledgement and agreement, that  
55 should the employee fail to timely return the specified items, the replacement cost of such items  
56 may be recovered by the employer from the employee's final wages;

57 (D) The employer shall notify the employee in writing at the time of discharge or resignation  
58 by personal service, or as soon thereafter as practicable by personal service or via certified mail  
59 with return receipt requested, as to the replacement cost of the items and make a demand for  
60 return of such employer provided property within a certain date, not to exceed ~~ten~~ 10 business  
61 days of the notification; and

62 (E) The employer shall relinquish the withheld, deducted, or diverted wages to the  
63 employee if the employee returns the employer's property, equipment, supplies, and uniforms in  
64 a condition suitable for the age and usage of the items within the deadline specified in paragraph  
65 (D) of this subsection: *Provided*, That uniforms returned to the employer within three years of their  
66 issuance shall be deemed acceptable in their current condition at the time of separation from  
67 employment for purposes of this section: *Provided, further however, That* replacement tools are  
68 deemed to be the property of the employee and are not subject to the provisions of this section.

69 (2) Nothing herein precludes an employee from voluntarily consenting in writing to an  
70 employer's withholding, deduction, or diversion of a certain amount from the employee's final  
71 wages in satisfaction of subsection (1) of this section.

72 (3) If an employee objects to the replacement cost amount to be deducted by an employer,  
73 and provides such written objection within the deadline specified in paragraph (D), subsection (1)  
74 of this subsection, then the employer shall place the controverted amount in an interest bearing

75 escrow account: *Provided*, That if a civil action or equitable relief is not brought by the employee  
76 for the claimed amount within three months, the employee shall forfeit the amount in escrow and  
77 such money shall revert to the employer.

78 (4) Nothing in this subsection is intended, nor shall it be construed, to abolish or limit any  
79 other remedies available to an employer to recover employer provided property, damages related  
80 to employer provided property or any other damages or relief, equitable or otherwise, available  
81 under any applicable law.

82 (5) Notwithstanding any provision in this section to the contrary, this provision shall not  
83 apply to employer-employee business relationships that are subject to, and governed by,  
84 collective bargaining agreements.

85 (6) For purposes of this section the following terms mean:

86 (A) The term “employer provided property” means all property provided by an employer to  
87 an employee for use in the employer’s business, including but not limited to, equipment, phone,  
88 computer, supplies, or uniforms.

89 (B) The term “replacement cost” means actual cost paid by an employer for employer  
90 provided property, or for the same or similar property, if the original employer provided property  
91 no longer exists. In calculating the “replacement cost”, the cost shall include any vendor discounts  
92 provided to the employer for such property.

93 (C) The term “replacement tools” means equipment, other than uniforms, provided by the  
94 employer to the employee for use in the course of the employer’s business and to replace  
95 equipment provided by the employee that is lost.

# **WEST VIRGINIA LEGISLATURE**

**2022 REGULAR SESSION**

**Introduced**

## **Senate Bill 245**

BY SENATORS TRUMP AND WOELFEL

[Introduced January 12, 2022; referred to  
the Committee on the Judiciary]

1 A BILL to amend and reenact §21-5-3 and §21-5-4 of the Code of West Virginia, 1931, as  
 2 amended, all relating to revising wage payment and collection; and modifying information  
 3 related to payroll cards.

*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  
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 4 and with no more than 19 days between settlements, unless otherwise provided by special  
 5 agreement, and pay them the wages due, less authorized deductions and authorized wage  
 6 assignments, for their work or services.

7 (b) Payment required in subsection (a) of this section shall be made by the person, firm,  
 8 or corporation in one of the following ways:

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

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

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

21 ~~or corporation paying the compensation and the person being compensated~~ An employer who  
22 compensates its employees using payroll cards shall provide full written disclosure of any  
23 applicable fees associated with the payroll card. If an employee does not provide the financial  
24 institution, type of account, and account number as specified under subsection (4) below to enable  
25 direct deposit, the employer may pay such employee by payroll card pursuant to this section; or

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

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

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

39 (e) No assignment of or order for future wages may be valid for a period exceeding one  
40 year from the date of the assignment or order. An assignment or order shall be in writing and shall  
41 specify thereon the total amount due and collectible by virtue of the same and, unless otherwise  
42 provided for in subsection (f) of this section, three-fourths of the periodical earnings or wages of  
43 the assignor are all times exempt from such assignment or order and no assignment or order is  
44 valid which does not so state upon its face: *Provided*, That no such order or assignment is valid  
45 unless the written acceptance of the employer of the assignor to the making thereof is endorsed  
46 thereon: *Provided, however*, That nothing herein contained may be construed as affecting the

47 right of a private employer and its employees to agree between themselves as to deductions to  
48 be made from the payroll of employees.

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

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

**§21-5-4. Cash orders; employees separated from payroll before paydays; employer provided property.**

1 (a) In lieu of lawful money of the United States, any person, firm or corporation may  
2 compensate employees for services by cash order which may include checks, direct deposits,  
3 payroll cards or money orders on banks convenient to the place of employment where suitable  
4 arrangements have been made for the cashing of the checks by employees or deposit of funds  
5 for employees for the full amount of wages.

6 (b) Whenever a person, firm or corporation discharges an employee, or whenever an  
7 employee quits or resigns from employment, the person, firm or corporation shall pay the  
8 employee's wages due for work that the employee performed prior to the separation of  
9 employment on or before the next regular payday on which the wages would otherwise be due  
10 and payable: Provided, That fringe benefits, as defined in section one of this article, that are  
11 provided an employee pursuant to an agreement between the employee and employer and that  
12 are due, but pursuant to the terms of the agreement, are to be paid at a future date or upon  
13 additional conditions which are ascertainable are not subject to this subsection and are not  
14 payable on or before the next regular payday, but shall be paid according to the terms of the  
15 agreement. For purposes of this section, "business day" means any day other than Saturday,



16 Sunday or any legal holiday as set forth in section one, article two, chapter two of this code.

17 (c) Payment under this section may be made in person in any manner permissible under  
18 section three of this article, through the regular pay channels or, if requested by the employee, by  
19 mail. If the employee requests that payment under this section be made by mail, that payment  
20 shall be considered to have been made on the date the mailed payment is postmarked.

21 (d) When work of any employee is suspended as a result of a labor dispute, or when an  
22 employee for any reason whatsoever is laid off, the person, firm or corporation shall pay in full to  
23 the employee not later than the next regular payday, either through the regular pay channels or  
24 by mail if requested by the employee, wages earned at the time of suspension or layoff.

25 (e) If a person, firm or corporation fails to pay an employee wages as required under this  
26 section, the person, firm or corporation, in addition to the amount which was unpaid when due, is  
27 liable to the employee for two times that unpaid amount as liquidated damages. This section  
28 regulates the timing of wage payments upon separation from employment and not whether  
29 overtime pay is due. Liquidated damages that can be awarded under this section are not available  
30 to employees claiming they were misclassified as exempt from overtime under state and federal  
31 wage and hour laws. Every employee shall have a lien and all other rights and remedies for the  
32 protection and enforcement of his or her salary or wages, as he or she would have been entitled  
33 to had he or she rendered service therefor in the manner as last employed; except that, for the  
34 purpose of liquidated damages, the failure shall not be deemed to continue after the date of the  
35 filing of a petition in bankruptcy with respect to the employer if he or she is adjudicated bankrupt  
36 upon the petition.

37 (f)(1) Notwithstanding any provision in this section to the contrary, if at the time of  
38 discharge or resignation, an employee fails to return employer provided property, as set forth by  
39 the parties under paragraph (C) of this subsection, the employer may withhold, deduct or divert  
40 an employee's final wages, in an amount not to exceed the replacement cost of the employer  
41 provided property that was not returned as set forth under paragraph (C) of this subsection, to

42 recover the replacement cost of the employer provided property, subject to the following:

43 (A) The employer provided property had been provided to the employee in the course of,  
44 and for use in, the employer's business;

45 (B) The employer provided property has a value in excess of \$100;

46 (C) The employee had signed a written agreement with the employer contemporaneous  
47 with the obtaining of the employer provided property, or signed and ratified an agreement if  
48 property had been provided prior to the effective date of this provision; and such agreement  
49 contained, at a minimum, the following information:

50 (i) Specific itemization of the employer provided property, with a specified replacement  
51 cost;

52 (ii) Clear statement that such items are to be returned immediately upon discharge or  
53 resignation; and

54 (iii) Clear statement, coupled with the employee's acknowledgement and agreement, that  
55 should the employee fail to timely return the specified items, the replacement cost of such items  
56 may be recovered by the employer from the employee's final wages;

57 (D) The employer shall notify the employee in writing at the time of discharge or resignation  
58 by personal service, or as soon thereafter as practicable by personal service or via certified mail  
59 with return receipt requested, as to the replacement cost of the items and make a demand for  
60 return of such employer provided property within a certain date, not to exceed ten business days  
61 of the notification; and

62 (E) The employer shall relinquish the withheld, deducted or diverted wages to the  
63 employee if the employee returns the employer's property, equipment, supplies and uniforms in  
64 a condition suitable for the age and usage of the items within the deadline specified in paragraph

65 (D) of this subsection: *Provided*, That uniforms returned to the employer within three years of their  
66 issuance shall be deemed acceptable in their current condition at the time of separation from  
67 employment for purposes of this section: *Provided, further however, That* replacement tools are

68 deemed to be the property of the employee and are not subject to the provisions of this section.

69 (2) Nothing herein precludes an employee from voluntarily consenting in writing to an  
70 employer's withholding, deduction or diversion of a certain amount from the employee's final  
71 wages in satisfaction of subsection (1) of this section.

72 (3) If an employee objects to the replacement cost amount to be deducted by an employer,  
73 and provides such written objection within the deadline specified in paragraph (D), subsection (1)  
74 of this subsection, then the employer shall place the controverted amount in an interest bearing  
75 escrow account: *Provided*, That if a civil action or equitable relief is not brought by the employee  
76 for the claimed amount within three months, the employee shall forfeit the amount in escrow and  
77 such money shall revert to the employer.

78 (4) Nothing in this subsection is intended, nor shall it be construed, to abolish or limit any  
79 other remedies available to an employer to recover employer provided property, damages related  
80 to employer provided property or any other damages or relief, equitable or otherwise, available  
81 under any applicable law.

82 (5) Notwithstanding any provision in this section to the contrary, this provision shall not  
83 apply to employer-employee business relationships that are subject to, and governed by,  
84 collective bargaining agreements.

85 (6) For purposes of this section the following terms mean:

86 (A) The term "employer provided property" means all property provided by an employer to  
87 an employee for use in the employer's business, including but not limited to, equipment, phone,  
88 computer, supplies or uniforms.

89 (B) The term "replacement cost" means actual cost paid by an employer for employer  
90 provided property, or for the same or similar property, if the original employer provided property  
91 no longer exists. In calculating the "replacement cost", the cost shall include any vendor discounts  
92 provided to the employer for such property.

93 (C) The term "replacement tools" means equipment, other than uniforms, provided by the

- 94 employer to the employee for use in the course of the employer's business and to replace  
95 equipment provided by the employee that is lost.

NOTE: The purpose of this bill is to revise wage payment and collection and to modify information related to payroll cards.

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

# West Virginia Senate

## Roll Call

### SB 245

Revising wage payment and collection

**Yea: 26**

**Nay: 7**

**Absent: 1**

**Excused: 0**

Y AZINGER	N LINDSAY	N STOLLINGS
N BALDWIN	Y MARONEY	Y STOVER
N BEACH	Y MARTIN	Y SWOPE
Y BOLEY	Y MAYNARD	Y SYPOLT
N BROWN	Y NELSON	Y TAKUBO
N CAPUTO	Y PHILLIPS	Y TARR
Y CLEMENTS	Y PLYMALE	Y TRUMP
N GEFFERT	Y ROBERTS	Y WELD
Y GRADY	Y ROMANO	A WOELFEL
Y HAMILTON	Y RUCKER	Y WOODRUM
Y JEFFRIES	Y SMITH	Y MR PRESIDENT
Y KARNES		

Concur and Pass

# West Virginia House of Delegates

## 85th Legislature - Regular Session 2022

**SB 245**

**Revising wage payment and collection**

**RCS# 474**

3/10/2022 11:33 AM

### Passage

**Yeas: 76 Nays: 24 Absent: 0 Passed**

#### Yea: 76

Anderson	Forsht	Kelly, J.	Reed
Barnhart	Foster	Kessinger	Reynolds
Barrett	Gearheart	Kimble	Riley
Bates	Graves	Kimes	Rowan
Boggs	Hamrick	Linville	Smith
Booth	Hanna	Longanacre	Statler
Bridges	Hardy	Mallow	Steele
Burkhammer	Haynes	Mandt	Storch
Capito	Holstein	Martin	Summers
Clark	Honaker	Maynard	Sypolt
Conley	Horst	Maynor	Toney
Cooper	Hott	Mazzocchi	Tully
Criss	Householder	McGeehan	Wamsley
Crouse	Howell	Miller	Ward, B.
Dean	Jeffries, D.	Pack	Ward, G.
Ellington	Jeffries, J.	Phillips	Westfall
Espinosa	Jennings	Pinson	Worrell
Fast	Keaton	Pritt	Zatezalo
Ferrell	Kelly, D.	Queen	Mr. Speaker

#### Nay: 24

Barach	Fluharty	Nestor	Skaff
Brown	Garcia	Paynter	Thompson
Diserio	Griffith	Pethtel	Walker
Doyle	Hansen	Pushkin	Williams
Evans	Hornbuckle	Rohrbach	Young
Fleischauer	Lovejoy	Rowe	Zukoff

# West Virginia Senate

## Roll Call

### SB 245

Revising wage payment and collection

**Yea: 28**

**Nay: 6**

**Absent: 0**

**Excused: 0**

Y AZINGER	N LINDSAY	N STOLLINGS
N BALDWIN	Y MARONEY	Y STOVER
N BEACH	Y MARTIN	Y SWOPE
Y BOLEY	Y MAYNARD	Y SYPOLT
Y BROWN	Y NELSON	Y TAKUBO
N CAPUTO	Y PHILLIPS	Y TARR
Y CLEMENTS	Y PLYMALE	Y TRUMP
N GEFFERT	Y ROBERTS	Y WELD
Y GRADY	Y ROMANO	Y WOELFEL
Y HAMILTON	Y RUCKER	Y WOODRUM
Y JEFFRIES	Y SMITH	Y MR PRESIDENT
Y KARNES		

3rd Reading

SB245 HFA Young 3-10 #3  
Altizer - 3259

Delegate Young moves to amend Com Sub for SB245 on page 2, Section 3, line 29, following the period, by inserting the following:

“Payroll card vendors may not provide employers with any financial or other incentives for offering payroll cards as a wage payment option.”



SB245 HFA Young 3-10 #2  
Altizer - 3259

Delegate Young moves to amend Com Sub for SB245 on page 2, Section 3, line 25, by striking out the words "at least one withdrawal or transfer" and inset in lieu thereof, the word "unlimited withdrawals or transfers".

SB245 HFA Young 3-10 #1  
Altizer - 3259

Delegate Young moves to amend Com. Sub for SB245 on page 1, Section 3, line 3 by striking out the words "of a person, firm, or corporation's choosing".

SB245 HFA Young 3-10 #3  
Altizer - 3259

Delegate Young moves to amend Com Sub for SB245 on page 2, Section 3, line 29, following the period, by inserting the following:

“Payroll card vendors may not provide employers with any financial or other incentives for offering payroll cards as a wage payment option.”

SB245 HFA Young 3-10 #2  
Altizer - 3259

Delegate Young moves to amend Com Sub for SB245 on page 2, Section 3, line 25, by striking out the words "at least one withdrawal or transfer" and inset in lieu thereof, the word "unlimited withdrawals or transfers".

SB245 HFA Young 3-10 #1  
Altizer - 3259

Delegate Young moves to amend Com. Sub for SB245 on page 1, Section 3, line 3 by striking out the words "of a person, firm, or corporation's choosing".

SB245 H JUD AM #1

Casto 3264

The Committee on the Judiciary moved to amend the bill on page 2, section 3, line 39, by inserting a new subsection (c) to read as follows:

“(c) An employer who chooses to compensate its employees using payroll cards pursuant to the provisions of subsection (b)(3) of this section must also give employees the option of being paid by electronic transfer under the provisions of subsection (b)(4) of this section.”

AND

Renumbering the remaining subsections accordingly.

Adopted

Rejected

SB245 H JUD AM #1

Casto 3264

The Committee on the Judiciary moved to amend the bill on page 2, section 3, line 39, by inserting a new subsection (c) to read as follows:

“(c) An employer who chooses to compensate its employees using payroll cards pursuant to the provisions of subsection (b)(3) of this section must also give employees the option of being paid by electronic transfer under the provisions of subsection (b)(4) of this section.”

AND

Renumbering the remaining subsections accordingly.

Adopted

Rejected