

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **House Bill 4490**

BY DELEGATES R. SMITH, CADLE, FOSTER, STATLER,  
HOUSEHOLDER, FAIRCLOTH, HOWELL, BUTLER AND  
ATKINSON

[Introduced February 11, 2016; 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 requirements by which an employee can authorize deductions from his or her wages.

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

1 That §21-5-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted  
2 to read as follows:

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

**§21-5-3. Payment of wages by employers other than railroads; ~~assignments of~~ deductions  
from 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 nineteen days between settlements, unless otherwise  
4 provided by special agreement, and pay them the wages due, less authorized deductions ~~and~~  
5 ~~authorized 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 section four of this article;
  - 9 (3) By deposit or electronic transfer of immediately available funds into an employees
- 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 employees 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-party 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 employees 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, form

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

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

32 ~~(e) No assignment of or order for future wages shall be valid for a period exceeding one~~  
33 ~~year from the date of the assignment or order. An assignment or order shall be acknowledged by~~  
34 ~~the party making the same before a notary public or other officer authorized to take~~  
35 ~~acknowledgments, and any order or assignment shall specify thereon the total amount due and~~  
36 ~~collectible by virtue of the same and three fourths of the periodical earnings or wages of the~~  
37 ~~assignor shall at all times be exempt from such assignment or order and no assignment or order~~  
38 ~~shall be valid which does not so state upon its face: *Provided*, That no such order or assignment~~  
39 ~~shall be valid unless the written acceptance of the employer of the assignor to the making thereof~~  
40 ~~is endorsed thereon:~~

41 An employer may not make a deduction from the wage of an employee unless the  
42 deduction is:

43 (1) Ordered by a court of competent jurisdiction;

44 (2) Authorized expressly in writing by the employee; or

45 (3) Otherwise made in accordance with any law or rule.

46 *Provided, however,* That nothing herein contained shall be construed as affecting the right  
47 of employer and employees to agree between themselves as to deductions to be made from the  
48 payroll of employees.

NOTE: The purpose of this bill is to modify the requirements by which an employee can authorize deductions from his or her wages.

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