WEST VIRGINIA CODE CHAPTER 38 ARTICLE 5A

WV Legislature

§38-5A-1. Definitions.

For purposes of this article:

(1) "Salary" and "wages" shall be given their ordinary meaning but in any event shall include compensation measured partly or wholly by commissions, percentages or share of profits or by other sums based upon work done or results produced whether or not the judgment debtor is given a drawing account.

(2) The term "suggestee execution" shall mean an execution differing from an ordinary execution upon a judgment only in that it is directed against money due or to become due to the judgment debtor from the suggestee as therein set out.

(3) The term "judgment creditor" shall include the owner of a money decree.

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§38-5A-2. Salary or wages subject to suggestion only as provided in this article.

Salary or wages payable to any person engaged in private employment, whether due and owing or to become due and owing, shall be subject to suggestion by judgment creditors only as provided by this article.

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§38-5A-3. Application for suggestee execution against salary or wages; extent of lien and continuing levy; exemption; priority among suggestee executions.

(a) A judgment creditor may apply to the court in which the judgment was recovered or a court having jurisdiction of the same, without notice to the judgment debtor, for a suggestee execution against any money due or to become due within one year after the issuance of such execution to the judgment debtor as salary or wages arising out of any private employment. If satisfactory proof shall be made, by affidavit or otherwise, of such facts and the fact that the amount due or to become due as salary or wages after the deduction of all state and federal taxes exceeds in any week fifty times the federal minimum hourly wage then in effect, the court, if not a court of record, or if a court of record the clerk thereof, shall issue a suggestee execution against the salary or wages of the judgment debtor and upon presentation of such execution by the officer to whom delivered for collection to the person or persons from which such salary or wages are due and owing or thereafter may become due and owing to the judgment debtor, the execution and the expenses thereof shall become a lien and continuing levy upon the salary or wages due or to become due to the judgment debtor within one year after the issuance of the same, unless sooner vacated or modified as hereinafter provided, to an amount equal to twenty percent thereof and no more, but in no event shall the payments in satisfaction of such an execution reduce the amount payable to the judgment debtor to an amount per week that is less than fifty times the federal minimum hourly wage then in effect. Only one such execution shall be satisfied, at one time, except that in the event two or more such executions have been served and satisfaction of the one having priority is completed without exhausting the amount of the salary or wages then due and payable that is subject to suggestion under this article the balance of such amount shall be paid in satisfaction, in the order of their priority, of junior suggestee executions against such salary or wages theretofore served.

(b) The suggestee execution by the judgment creditor provided in this section shall include, to the extent possible, the present address and date of birth of the judgment debtor, which information shall be made available for the purpose of properly identifying the judgment debtor whose salary or wages are being levied upon.

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§38-5A-4. Notice to judgment debtor; time for service on suggestee; fee.

A certified copy of an execution issued under this article against salary or wages shall be served upon the judgment debtor. Such service shall be made by the court or the clerk of the court who issued the execution by mailing the copy to the judgment debtor or his or her agent authorized to accept service of process by certified mail, return receipt requested. The day and hour of such mailing shall be clearly noted on the face of the original execution and the clerk of the court or the officer to whom it is delivered for collection shall not make service upon the suggestee until the expiration of five days from that time.

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§38-5A-5. Service of suggestee execution upon suggestee; payments in satisfaction of execution; action for failure or refusal to pay; payments to be made every ninety days.

(a) Service of a suggestee execution against salary or wages may be made by the clerk of the circuit court or the magistrate court clerk, as the case may be, by sending a copy of the suggestee execution to the suggestee by certified mail, return receipt requested, with delivery restricted to the addressee as provided by subdivision (1), section (d) of rule four of the Rules of Civil Procedure for trial courts of record. If the registered mail is unclaimed or otherwise is not accepted or is refused by the suggestee, then service of the suggestee execution shall be made in the same manner as a summons commencing an action is served in accordance with the Rules of Civil Procedure for trial courts of record: Provided, That if the suggestee is located in a county other than the county where the suggestee execution issues, the clerk may mail the suggestee execution by first class mail to the sheriff of the other county for such service. If the service is made on a corporation, limited liability company or other person or entity through the Secretary of State, it shall be submitted along with the fee required by section two, article one, chapter fifty-nine of this code.

(b) If the suggestee served with the execution is indebted or will in the future become indebted to the judgment debtor for salary or wages, then during the time the execution remains a lien on any indebtedness for salary and wages the suggestee is required to pay over to the officer serving the same or to the judgment creditor the percentage of the indebtedness required by section three of this article until the execution is wholly satisfied. The suggestee shall deduct the amounts paid from the amounts payable to the judgment debtor as salary or wages and the deduction of these amounts is a bar to any further action by the judgment creditor against the wages or salary of the judgment debtor.

(c) Once every ninety days during the life of such execution and any renewal execution the suggestee upon whom the execution or any renewal execution is served shall pay over to the officer who served the same or to the judgment creditor the full amount of money held or retained pursuant to such execution or renewal execution during the preceding ninety days.

If the suggestee upon whom the execution is served fails or refuses to pay over to the officer serving the execution or to the judgment creditor the required percentage of the indebtedness, as aforesaid, he or she shall be liable to an action therefor by the judgment creditor named in the execution and the amount recovered in the action shall be applied in satisfaction of the execution.

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§38-5A-6. Vacation and modification of suggestee executions.

Either party may apply at any time to the court if a court not of record, or the court or a judge thereof, if a court of record, from which such an execution shall have issued, upon such notice to the other party as such court or judge shall direct for the vacation or modification of the execution. After conducting a hearing thereon, the court or judge shall vacate the execution if satisfaction of the same or the judgment be made out by affidavit or otherwise, and in any case may make such modification of the execution as shall be deemed just, and such execution as so modified shall continue in full force and effect until paid and satisfied, or until vacated or further so modified. Such an execution may be vacated at any time upon the application of the judgment creditor without notice or a hearing and in such a case the clerk of a court of record shall have power to vacate the execution if issued out of his court. For the protection of the suggestee the lien of a suggestee execution shall, as regards the suggestee, be deemed unaffected by a vacating or modifying order prior to service of such order upon the suggestee.

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§38-5A-7. Renewal of suggestee executions.

A suggestee execution which shall expire wholly or partly unsatisfied may be renewed from time to time in the manner in which it was originally issued and for a like period. The renewal execution shall conform to the original save that it shall state in addition the fact that it is a renewal and shall be issued only for the balance due on the judgment. A renewal execution shall retain the same priority of lien as the original if, and only if, served within a thirty-day period ending on the date of the expiration of the life of the original or the last previous renewal, as the case may be.

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§38-5A-8. Priority of suggestee executions over assignments.

An execution issued and served under this article shall have priority over an assignment filed with the suggestee subsequent to service of the notice required by section four hereof.

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§38-5A-9. Exemptions.

A judgment debtor to whom money is due or to become due which would otherwise be subject to suggestion under this article may have the same exempted from levy in the manner and to the extent provided for by article eight of this chapter. The exemption may be claimed for sums currently accruing but must be asserted anew as to any salary or wages which shall begin to accrue after the next payment date. Such exemption shall not be binding upon a suggestee unless and until a certificate of exemption or true copy thereof shall have been delivered to him

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§38-5A-10. Accounting for moneys collected under suggestee executions.

It shall be the duty of the officer to whom a suggestee execution shall be delivered to account for and pay over to the person entitled thereto all moneys collected on such execution, less his lawful fees and expenses for collecting the same. Such accounting shall be made from time to time and at least once every month from the time a levy shall have been made.

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§38-5A-11. Supreme court of appeals authorized to prescribe forms of suggestee executions.

In aid of the better administration of this article the Supreme Court of Appeals is hereby authorized to prescribe forms of suggestee executions conformable to the provisions hereof. Forms so prescribed shall be followed in the preparation of all suggestee executions issued under this article from and after a date to be fixed by the Supreme Court of Appeals in promulgating the same, which shall not be less than thirty, nor more than ninety days after their certification as hereinafter provided. Copies of forms so prescribed shall be certified by the clerk of the Supreme Court of Appeals to the clerk of each court of record in the state. It shall thereupon be the duty in turn of each such clerk to furnish each court not of record within the circuit, district, or other territorial area constituting the territorial jurisdiction of his court, by registered mail, with true copies of the forms and at the same time to inform such court of the time when the action of the Supreme Court of Appeals in prescribing the forms shall take effect.

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§38-5A-12. Fees.

The general laws governing the fees of courts and court officers shall apply to the duties and functions performed under this article. In no event, however, shall the fee for modifying or vacating a suggestee execution exceed $1.

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§38-5A-13. Construction of article.

This article is remedial in purpose and shall be liberally construed to that end.

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