WEST VIRGINIA CODE CHAPTER 38 ARTICLE 5B

WV Legislature

§38-5B-1. Definitions.

For purposes of this article:

1. 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.

2. The term "state agency" shall mean any department, institution, board, commission, bureau, or other agency of the state government, including a public corporation created to effect a state public improvement.

3. The term "political subdivision" shall mean any county, county board of education, municipal corporation, or any other public corporation or governmental unit organized to perform one or more of the functions of local government or to effect a local public improvement.

4. The term "proper officer" shall mean the officer of the state, a state agency, or a political subdivision, as the case may be, upon whom to make service of suggestee executions under this article.

5. The term "judgment creditor" shall include the owner of a money decree.

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§38-5B-2. Application for suggestee execution against money from state, state agency or political subdivision; extent of lien and continuing levy; 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 the same to the judgment debtor from the state, a state agency or any political subdivision of the state. If satisfactory proof is made, by affidavit or otherwise, of such facts and, where the execution is sought against salary or wages, of the fact that the amount due or to become due as salary or wages after the deduction of 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 such money due or to become due to the judgment debtor, and there shall be entered on the face thereof the day and hour of issuance.

The execution and the expenses thereof shall, when served by the officer to whom delivered for collection in the manner hereinafter provided, upon the state, a state agency or political subdivision from which such money is due or may thereafter become due to the judgment debtor, become a lien and continuing levy upon the sums due or to become due to the judgment debtor within one year after the issuance of the execution (but not to exceed twenty percent of the salary or wages due to the judgment debtor or reduce the amount received by him or her per week to an amount less than fifty times the federal minimum hourly wage then in effect) unless sooner satisfied and paid, vacated or modified as hereinafter provided.

Where more than one suggestee execution has been issued pursuant to this section against the same judgment debtor, they shall be satisfied in the order of priority in which they are served upon the state, state agency or political subdivision from which the money is due or becomes due. For purposes of determining the priority, the time that an execution served by mail, as hereinafter provided, is received, and not the time of admission of service, shall control. In the case of two or more executions received in the same mail, delivery priority shall be accorded the one first issued.

(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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§38-5B-3. Suggestee execution against salary or wages; commencement of lien; priorities.

A suggestee execution issued under this article against salary or wages shall become a lien and continuing levy upon sums due or to become due to the judgment debtor as salary or wages to an amount equal to twenty per centum 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 less than $20 per week. A suggestee execution against salary or wages shall contain the name of the judgment debtor and the bureau, office, department, institution or subdivision thereof of the state or political subdivision of the state, as the case may be, of which he is an officer or employee. If a person so employed shall resign or be dismissed while an execution issued hereunder against his salary or wages is wholly or partly unsatisfied, and he shall thereafter be reinstated or reemployed, the execution shall lapse and no further deduction shall be made with respect thereto from his salary or wages unless such reinstatement or reemployment shall occur within ninety days after such resignation or dismissal. A suggestee execution shall not be affected by the transfer of the officer or employee who is the judgment debtor from one bureau, office, department, institution or subdivision thereof of the state or a political subdivision to another if the officer upon whom service of the execution was made would be the proper officer for service of a suggestee execution against salary or wages due or to become due to the judgment debtor in the new employment.

Such an execution shall not become a lien against salary or wages payable by the state or a state agency within ten days after the service thereof or payable by a political subdivision within five days after the service thereof but shall become a lien and continuing levy upon the salary or wages which shall become due or owing to the judgment debtor thereafter during the life of the execution.

Only one suggestee execution against the salary or wages of a judgment debtor 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.

WV Legislature

§38-5B-4. Notice to judgment debtor of execution against salary or wages; time for service on officer of suggestee.

A certified copy of an execution issued under this article against salary or wages shall be served by the clerk of the court who issued the execution upon 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 mailing shall be clearly noted on the face of the original execution and the officer to whom it is delivered for collection shall not make service upon the proper officer until the expiration of five days from that time.

WV Legislature

§38-5B-5. Service of suggestee execution and vacating or modifying order.

An execution issued under this article against money due and owing or to become due and owing from the state, or a state agency which shall be payable on the warrant of the State Auditor for the payment thereof directed to the judgment debtor must be served upon the State Auditor at his or her office in Charleston. In the case of money payable directly by any state agency the execution shall be served upon the auditor of such agency or, lacking such, upon the officer thereof whose duty it is to audit and/or to issue warrants, checks or orders for the payment of such claims. Such service shall be made by exhibiting and at the same time delivering a true copy of the original execution, to the proper officer, or to a person in his or her office designated and authorized by the State Auditor or head of such department, institution or agency, as the case may be, by writing filed in such office to receive it. Service of such an execution may be made by mail by the court or the clerk of the court who issued the execution or by the officer to whom the same is delivered or by any credible person, by enclosing the original suggestee execution in a postpaid wrapper addressed to the proper officer and agency together with a true copy of the suggestee execution. Service by mail shall not be deemed to be complete until duly admitted and until the original execution shall have been returned to the court or the clerk of the court who issued said execution. Such admission shall be made as soon as may be in the regular course of administration after receipt of the execution. The admission may be subscribed by the officer upon whom the service is required by this section to be made or by a person in his or her office designated and authorized by the State Auditor or the head of a state agency, as the case may be, by writing filed in such office to admit service of suggestee executions.

A suggestee execution against a political subdivision of the state shall be served upon the auditor thereof or the officer who, or the clerk of the board or any body which is charged with the duty of auditing and/or issuing warrants, checks or orders for the payment of such claims, in like manner as service hereunder upon state officers, except that service by mail shall not be sufficient or binding.

Service of a vacating or modifying order issued pursuant to section six of this article shall be made in the manner herein prescribed for the service of a suggestee execution.

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§38-5B-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.

WV Legislature

§38-5B-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.

WV Legislature

§38-5B-8

Repealed

Acts, 2017 Reg. Sess., Ch. 98.

WV Legislature

§38-5B-9. Payments in satisfaction of execution; liability of officer for payment or failure to pay; action against political subdivision failing to pay; declaratory judgment as to right against state.

It shall be the duty of the proper officer, after service of an execution under this article, bearing the notation required by section four of this article if directed against salary or wages, to pay to the judgment creditor such sums as may be or shall thereafter become due to the judgment debtor from the suggestee, or the amount thereof prescribed in section three of this article in the case of salary or wages, during the life of the execution until it shall be wholly satisfied. The proper officer or suggestee upon whom the execution or any renewal execution is served shall once every ninety days during the life of such execution and any renewal execution pay over as aforesaid the full amount of money payable, held or retained pursuant to such execution or renewal execution during the preceding ninety days.

A public officer who shall either pay over or fail or refuse to pay over, in satisfaction of such execution, money due the judgment debtor shall be personally liable therefor only if he or she shall have acted in bad faith, even though such payment or failure or refusal to pay shall have been in violation of the rights of one or more parties in interest.

If a political subdivision be the suggestee and shall fail or refuse to pay over to the judgment creditor the amount due the judgment debtor or the required percentage thereof in the case of salary or wages, it 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 toward the payment of the execution.

No judgment may be recovered against the state as suggestee but a judgment creditor may bring an action against the proper officer for a declaratory judgment establishing his or her right to have sums due or to become due to his or her judgment debtor or from the state or a state agency applied in satisfaction of a suggestee execution issued on his or her judgment pursuant to this article. Such an action may be brought against the State Auditor only in the circuit court of Kanawha County. Costs shall be in the discretion of the court.

WV Legislature

§38-5B-10. Priority of suggestee executions over assignments.

An execution issued and served under this article shall have priority over an assignment filed with the proper officer subsequent to service of the notice required by section four hereof in the case of salary or wages and subsequent to service of the execution in any other case. This section is not intended and shall not be deemed to modify the now existing law governing the validity of the assignment of the salary or wages of a public officer or employee.

WV Legislature

§38-5B-11. Executions against claims due contractors on public works.

An execution issued and served under this article shall, in the case of money due or to become due to a contractor on public work, apply only to such sums as shall be payable to the contractor after completion and acceptance of the work. Certification of completion and acceptance by the officer or body whose duty it is to make such determination shall be sufficient evidence to the proper officer of the facts of completion and acceptance for purposes of making payment in satisfaction of suggestee executions issued under this article.

WV Legislature

§38-5B-12. 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 by article eight of this chapter. In the case of salary or wages 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 the state, state agency or political subdivision of which the judgment debtor is an officer or employee unless and until a certificate of exemption or true copy thereof shall have been delivered to the proper officer upon whom to make service of a suggestee execution under this article.

Money due to any lawful beneficiary thereof from any workers' compensation, unemployment compensation, pension or retirement, public assistance or relief fund or system, or under the state's emergency employment program as provided by section six, Title II of Enrolled Senate Bill No. 1 (Budget Bill), enacted by the Legislature of West Virginia, regular session, one thousand nine hundred sixty-one, or any laws amendatory of, supplementary or successor to, such program that may hereafter be enacted, shall not be subject to suggestion under this article.

Public obligations, whether in the form of bonds, notes, certificates of indebtedness, or otherwise, and whether negotiable or nonnegotiable, shall not be subject to suggestion under this article.

WV Legislature

§38-5B-13. 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. In case of salaries, wages or other claims payable periodically, such accounting and payment shall be made from time to time and at least once every three months from the time a levy shall have been made.

WV Legislature

§38-5B-14. 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 be not 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.

WV Legislature

§38-5B-15. Garnishment and suggestion of money and other personality in hands of public officers.

Money and other personal property in the hands of a sheriff, constable, clerk of court, justice of the peace or other public officer who shall hold the same by virtue of his office and which belongs or is owed to any person shall be subject to garnishment and suggestion in the same manner and to the same extent as if held by him as a private individual, except that money or other property which is in custodia legis shall be paid or delivered into the court to abide the result of the suit, unless the court shall otherwise direct. This section does not apply to public property or funds.

WV Legislature

§38-5B-16. Construction of article; effect on existing law.

Existing law governing the presentment, audit and allowance of claims against the state, a state agency, or a political subdivision is not affected hereby and the provisions hereof shall not be deemed to permit payments in excess of appropriations not otherwise permitted by law. This article is remedial in purpose, however, and shall be liberally construed to that end.

WV Legislature