

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1939



ENROLLED

SENATE BILL No. 4

(By Mr. La Zan Mr. President

PASSED March 7th 1939

In Effect Ninety days for Passage



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Senate Bill No. 4

(By MR. LAFON, MR. PRESIDENT)

[Passed March 9, 1939; in effect ninety days from passage.]

AN ACT to amend chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, by adding thereto a new article, designated article five-b, providing for the suggestion of money due or to become due from the state, state agencies or political subdivisions of the state and for the garnishment and suggestion of money or other personalty held by public officers, and to repeal chapter one hundred ten, acts of the Legislature, regular session, one thousand nine hundred thirty-five, relating to the garnishment and suggestion

of salaries and wages of officers and employees of political subdivisions of the state.

Be it enacted by the Legislature of West Virginia:

That chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, be amended by adding thereto a new article, designated article five-b, to read as follows:

**Article 5-b. Suggestion of the State and Political Subdivisions;
Garnishment and Suggestion of Public Officers.**

Section 1. *Definitions.* For purposes of this article:

1. The term "suggestee execution" shall mean an execu-

tion 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

13 perform one or more of the functions of local government or
14 to effect a local public improvement.

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

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

Sec. 2. *General Provisions.* Upon the return of an exe-
2 cution wholly or partly unsatisfied a judgment creditor may
3 apply to the court in which the judgment was recovered or
4 a court having jurisdiction of the same, without notice to the
5 judgment debtor, for a suggestee execution against any money
6 due or to become due within one year after the issuance of the
7 same to the judgment debtor from the state, a state agency,
8 or any political subdivision of the state. If satisfactory proof
9 shall be made, by affidavit or otherwise, of such facts, and,
10 where the execution is sought against salary or wages, of the
11 fact that the amount due or to become due as salary or wages
12 exceeds ten dollars per week, the court, if not a court of
13 record, or if a court of record, the clerk thereof, shall issue

14 a suggestee execution against such money due or to become due
15 to the judgment debtor, and there shall be entered on the
16 face thereof the day and hour of issuance.

17 Such execution and the expenses thereof shall, when served
18 by the officer to whom delivered for collection in the manner
19 hereinafter provided, upon the state, a state agency, or po-
20 litical subdivision from which such money is due or may there-
21 after become due to the judgment debtor, become a lien and
22 continuing levy upon the sums due or to become due to the
23 judgment debtor within one year after the issuance of the
24 same (but not to exceed the specified amount of salary or
25 wages as hereinafter provided) unless sooner satisfied and
26 paid, vacated or modified as hereinafter provided.

27 Where more than one suggestee execution shall have been
28 issued pursuant to the provisions of this section against the
29 same judgment debtor, they shall be satisfied in the order of
30 priority in which they are served upon the state, state agency,
31 or political subdivision from which such money is due or shall
32 become due. For purposes of determining such priority the
33 time that an execution served by mail, as hereinafter pro-
34 vided, shall be received, and not the time of admission of

35 service, shall control. In the case of two or more executions
36 received in the same mail delivery priority shall be accorded
37 the one first issued.

Sec. 3. *Suggestion of Salary or Wages.* A suggestee exe-
2 cution issued under this article against salary or wages shall
3 become a lien and continuing levy upon sums due or to be-
4 come due to the judgment debtor as salary or wages to an
5 amount equal to twenty per centum thereof and no more, but
6 in no event shall the payments in satisfaction of such an exe-
7 cution reduce the amount payable to the judgment debtor to
8 less than ten dollars per week. A suggestee execution against
9 salary or wages shall contain the name of the judgment debtor
10 and the bureau, office, department, institution or subdivision
11 thereof of the state or political subdivision of the state, as the
12 case may be, of which he is an officer or employee. If a person
13 so employed shall resign or be dismissed while an execution
14 issued hereunder against his salary or wages is wholly or
15 partly unsatisfied, and he shall thereafter be re-instated or re-
16 employed, the execution shall lapse and no further deduction
17 shall be made with respect thereto from his salary or wages
18 unless such re-instatement or re-employment shall occur with-

19 in ninety days after such resignation or dismissal. A suggestee
20 execution shall not be affected by the transfer of the officer or
21 employee who is the judgment debtor from one bureau, office,
22 department, institution or subdivision thereof of the state or
23 a political subdivision to another if the officer upon whom
24 service of the execution was made would be the proper officer
25 for service of a suggestee execution against salary or wages
26 due or to become due to the judgment debtor in the new em-
27 ployment.

28 Such an execution shall not become a lien against salary or
29 wages payable by the state or a state agency within ten days
30 after the service thereof or payable by a political subdivision
31 within five days after the service thereof but shall become a
32 lien and continuing levy upon the salary or wages which shall
33 become due or owing to the judgment debtor thereafter dur-
34 ing the life of the execution.

35 Only one suggestee execution against the salary or wages of
36 a judgment debtor shall be satisfied at one time, except that
37 in the event two or more such executions have been served
38 and satisfaction of the one having priority is completed with-
39 out exhausting the amount of the salary or wages then due and

40 payable that is subject to suggestion under this article the
41 balance of such amount shall be paid in satisfaction, in the
42 order of their priority, of junior suggestee executions against
43 such salary or wages theretofore served.

Sec. 4. *Notice to the Judgment Debtor.* A certified copy
2 of an execution issued under this article against salary or
3 wages shall be served upon the judgment debtor. Such service
4 shall be made by the court or the clerk of court who issued
5 the execution by enclosing the copy in a postpaid wrapper,
6 addressed to the judgment debtor or his agent authorized to
7 accept service of process, and forwarding the same by reg-
8 istered mail, return receipt requested. The day and hour of
9 such mailing shall be clearly noted on the face of the original
10 execution and the officer to whom it is delivered for collection
11 shall not make service upon the proper officer until the ex-
12 piration of five days from that time. The fee for service of
13 notice under this section shall be twenty-five cents without
14 any additional allowance for postage, registry fee, or other ex-
15 penses incurred in effecting service.

Sec. 5. *Service of Suggestee Execution.* An execution is-
2 sued under this article against money due and owing or to

3 become due and owing from the state, or a state agency which
4 shall be payable on the warrant of the state auditor for the
5 payment thereof directed to the judgment debtor must be
6 served upon the state auditor at his office in Charleston. In
7 the case of money payable directly by any state agency the
8 execution shall be served upon the auditor of such agency,
9 or, lacking such, upon the officer thereof whose duty it is to
10 audit and/or to issue warrants, checks or orders for the pay-
11 ment of such claims. Such service shall be made by exhibiting
12 and at the same time delivering a true copy of the original
13 execution, and paying the prescribed fee, to the proper officer,
14 or to a person in his office designated and authorized by the
15 state auditor or head of such department, institution, or
16 agency, as the case may be, by writing filed in such office to
17 receive it. Service of such an execution may be made by
18 mail by the court or the clerk of the court who issued the
19 execution or by the officer to whom the same is delivered or
20 by any credible person, by enclosing the original suggestee
21 execution in a postpaid wrapper addressed to the proper
22 officer and agency together with a true copy thereof and the
23 amount of the prescribed fee. Service by mail shall not be

24 deemed to be complete until duly admitted and until the
25 original execution shall have been returned to the court or
26 the clerk of the court who issued said execution. Such
27 admission shall be made as soon as may be in the regular
28 course of administration after receipt of the execution. The
29 admission may be subscribed by the officer upon whom the
30 service is required by this section to be made or by a person
31 in his office designated and authorized by the state auditor or
32 the head of a state agency, as the case may be, by writing
33 filed in such office, to admit service of suggestee executions.

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

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

Sec. 6. *Vacation and Modification of Suggestee Executions.*

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

Sec. 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 thirty days before the expiration of the life of the original.

Sec. 8. *Fees.* A filing fee of one dollar shall be paid the proper officer for each suggestee execution or renewal thereof served upon him. A filing fee of fifty cents shall be paid such officer for any other paper served upon him under this article. The sums so received shall, in cases where the state or a state agency is the suggestee, be paid into the state treasury, to the credit of the general fund, and, in cases where a political subdivision is suggestee, be paid over to the credit of its general fund.

The general laws governing the fees of courts and court officers shall apply to the duties and functions performed

12 under this article. In no event, however, shall the fee for
13 modifying or vacating a suggestee execution exceed one dollar.

Sec. 9. *Payment in Satisfaction of Execution.* It shall be
2 the duty of the proper officer, after service of an execution
3 under this article, bearing the notation required by section
4 four hereof if directed against salary or wages, to pay to the
5 court or the clerk of the court who issued the execution or to
6 the officer presenting the same such sums as may be or shall
7 thereafter become due to the judgment debtor from the sug-
8 gestee, or the amount thereof prescribed in section three of
9 this article in the case of salary or wages, during the life of
10 the execution until it shall be wholly satisfied.

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

17 If a political subdivision be the suggestee and shall fail or
18 refuse to pay over to the officer who served the execution the
19 amount due the judgment debtor or the required percentage

20 thereof in the case of salary or wages, it shall be liable to an
21 action therefor by the judgment creditor named in the exe-
22 cution and the amount recovered in the action shall be ap-
23 plied toward the payment of the execution.

24 No judgment may be recovered against the state as sug-
25 gested but a judgment creditor may bring an action against
26 the proper officer for a declaratory judgment establishing his
27 right to have sums due or to become due to his judgment
28 debtor or from the state or a state agency applied in satis-
29 faction of a suggestee execution issued on his judgment
30 pursuant to this article. Such an action may be brought
31 against the state auditor only in the circuit court of
32 Kanawha County. Costs shall be in the discretion of the
33 court.

Sec. 10. *Priority of Suggestee Executions Over Assignments.*

2 An execution issued and served under this article shall have
3 priority over an assignment filed with the proper officer sub-
4 sequent to service of the notice required by section four hereof
5 in the case of salary or wages and subsequent to service of the
6 execution in any other case. This section is not intended and
7 shall not be deemed to modify the now existing law governing

8 the validity of the assignment of the salary or wages of a
9 public officer or employee.

Sec. 11. *Claims of Contractors on Public Works.* An execution issued and served under this article shall, in the case of
2 money due or to become due to a contractor on public work,
3 apply only to such sums as shall be payable to the contractor
4 after completion and acceptance of the work. Certification
5 of completion and acceptance by the officer or body whose duty
6 it is to make such determination shall be sufficient evidence to
7 the proper officer of the facts of completion and acceptance
8 for purposes of making payment in satisfaction of suggestee
9 executions issued under this article.

Sec. 12. *Exemptions.* A judgment debtor to whom money
2 is due or to become due which would otherwise be subject to
3 suggestion under this article may have the same exempted
4 from levy in the manner and to the extent provided by article
5 eight of this chapter. In the case of salary or wages the exemption
6 may be claimed for sums currently accruing but
7 must be asserted anew as to any salary or wages which shall
8 begin to accrue after the next payment date. Such exemption
9 shall not be binding upon the state, state agency or political

10 subdivision of which the judgment debtor is an officer or
11 employee unless and until a certificate of exemption or true
12 copy thereof shall have been delivered to the proper officer
13 upon whom to make service of a suggestee execution under
14 this article.

15 Money due to any lawful beneficiary thereof from any work-
16 men's compensation, unemployment compensation, pension or
17 retirement, or public assistance or relief fund or system, shall
18 not be subject to suggestion under this article.

19 Public obligations, whether in the form of bonds, notes, cer-
20 tificates of indebtedness, or otherwise, and whether negotiable
21 or non-negotiable, shall not be subject to suggestion under
22 this article.

Sec. 13. *Accounting for Moneys Collected Under Suggestee*
2 *Executions.* It shall be the duty of the officer to whom a sug-
3 gестee execution shall be delivered to account for and pay
4 over to the person entitled thereto all moneys collected on such
5 execution, less his lawful fees and expenses for collecting the
6 same. In case of salaries, wages or other claims payable
7 periodically, such accounting and payment shall be made

8 from time to time and at least once every three months from
9 the time a levy shall have been made.

Sec. 14. *Supreme Court of Appeals Authorized to Prescribe*
2 *Forms of Suggestee Executions.* In aid of the better admin-
3 istration of this article the Supreme Court of Appeals is here-
4 by authorized to prescribe forms of suggestee executions con-
5 formable to the provisions hereof. Forms so prescribed shall
6 be followed in the preparation of all suggestee executions is-
7 sued under this article from and after a date to be fixed by
8 the Supreme Court of Appeals in promulgating the same,
9 which shall be not less than thirty nor more than ninety days
10 after their certification as hereinafter provided. Copies of
11 forms so prescribed shall be certified by the clerk of the Su-
12 preme Court of Appeals to the clerk of each court of record in
13 the state. It shall thereupon be the duty in turn of each such
14 clerk to furnish each court not of record within the circuit
15 district, or other territorial area constituting the territorial
16 jurisdiction of his court, by registered mail, with true copies
17 of the forms and at the same time to inform such court of the

18 time when the action of the Supreme Court of Appeals in
19 prescribing the forms shall take effect.

Sec. 15. *Garnishment and Suggestion of Money and Other*
2 *Personalty in the Hands of Public Officers.* Money and other
3 personal property in the hands of a sheriff, constable, clerk of
4 court, justice of the peace or other public officer who shall hold
5 the same by virtue of his office and which belongs or is owed to
6 any person shall be subject to garnishment and suggestion in
7 the same manner and to the same extent as if held by him as
8 a private individual, except that money or other property
9 which is in *custodia legis* shall be paid or delivered into the
10 court to abide the result of the suit, unless the court shall
11 otherwise direct. This section does not apply to public prop-
12 erty or funds.

Sec. 16. *Construction of Article: Effect on Existing Law.*
2 Existing law governing the presentment, audit and allowance
3 of claims against the state, a state agency, or a political sub-
4 division is not affected hereby and the provisions hereof shall
5 not be deemed to permit payments in excess of appropriations
6 not otherwise permitted by law. This article is remedial in
7 purpose, however, and shall be liberally construed to that end.

Sec. 17. *Acts Repealed.* Chapter one hundred ten, acts of
2 the Legislature, regular session, one thousand nine hundred
3 thirty-five, is hereby repealed.

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

E. O. Wiseman

Chairman Senate Committee

Dee G. Walter

Chairman House Committee

Originated in the Senate

Takes effect ninety days for passage

Stephen T. Lindsey

Clerk of the Senate

Geo S. Hall

Clerk of the House of Delegates

Wm M. Keenan

President of the Senate

James Taylor Thomas

Speaker House of Delegates

The within approved this the 15th

day of March, 1939.

Amos G. Holt

Governor



Filed in the office of the Secretary of State
of West Virginia MAR 16 1939
Wm. S. O'BRIEN,
Secretary of State