

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1939

ENROLLED

SENATE BILL No. 5

(By Mr. LaFon Mr. President)

PASSED March 9th 1939

In Effect Ninety days from Passage



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(BY MR. LAFON, MR. PRESIDENT)

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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-a, providing for the suggestion of the salary and wages of persons engaged in private employment.

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-a, to read as follows:

Article 5-a. Suggestions of Salary and Wages of Persons Engaged in Private Employment.

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

2 (1) "Salary" and "wages" shall be given their ordinary
3 meaning but in any event shall include compensation measur-
4 ed partly or wholly by commissions, percentages or share of
5 profits or by other sums based upon work done or results pro-
6 duced whether or not the judgment debtor is given a drawing
7 account.

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

12 (3) The term "judgment creditor" shall include the own-
13 er of a money decree.

Sec. 2. *Salary or Wages Subject to Suggestion Only as*

2 *Provided in this Article.* Salary or wages payable to any
3 person engaged in private employment, whether due and
4 owing or to become due and owing, shall be subject to sug-
5 gession by judgment creditors only as provided by this article.

Sec. 3. *General Provisions.* Upon the return of an execution wholly or partly unsatisfied 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 exceeds ten dollars per week 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

22 as hereinafter provided, to an amount equal to twenty per
23 centum thereof and no more, but in no event shall the pay-
24 ments in satisfaction of such an execution reduce the amount
25 payable to the judgment debtor to less than ten dollars per
26 week. Only one such execution shall be satisfied, at one time,
27 except that in the event two or more such executions have
28 been served and satisfaction of the one having priority is
29 completed without exhausting the amount or the salary or
30 wages then due and payable that is subject to suggestion
31 under this article the balance of such amount shall be paid
32 in satisfaction, in the order of their priority, of junior sug-
33 gested executions against such salary or wages theretofore
34 served.

Sec. 4. *Notice to the Judgment Debtor.* A certified copy of

2 an execution issued under this article against salary or wages
3 shall be served upon the judgment debtor. Such service shall
4 be made by the court or the clerk of the court who issued the
5 execution by enclosing the copy in a postpaid wrapper ad-
6 dressed to the judgment debtor or his agent authorized to
7 accept service of process and forwarding the same by regis-
8 tered 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 suggestee 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
15 expenses incurred in effecting service.

*Sec. 5. Service of Suggestee Executions Upon Suggestees;
2 Payment in Satisfaction of Such Executions; Action for Fail-
3 ure or Refusal to Pay.* A suggestee execution issued under
4 this article against salary or wages shall be served upon the
5 suggestee in the same manner as summons commencing an
6 action is served. It shall be the duty of any person upon
7 whom such an execution, bearing the notation required by
8 section four hereof, shall be served, and who shall at that
9 time be indebted or who shall thereafter become indebted to
10 the judgment debtor named in the execution for salary or
11 wages, and while the execution shall remain a lien upon
12 said indebtedness, to pay over to the officer serving the same
13 or to the judgment creditor such amount of said indebtedness
14 as is required by section three hereof during the life of the

15 execution until it shall be wholly satisfied. The sums so paid
16 shall be deducted from the amounts payable to the judgment
17 debtor and such payment shall be a bar to any action by him
18 therefor.

19 If the suggestee upon whom the execution shall be served,
20 shall fail or refuse to pay over to the officer serving the exe-
21 cution or to the judgment creditor the required percentage
22 of the indebtedness, he shall be liable to an action therefor
23 by the judgment creditor named in the execution and the
24 amount recovered in the action shall be applied in satisfac-
25 tion of the 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,

11 and such execution as so modified shall continue in full force
12 and effect until paid and satisfied, or until vacated or further
13 so modified. Such an execution may be vacated at any time
14 upon the application of the judgment creditor without notice
15 or a hearing and in such a case the clerk of a court of record
16 shall have power to vacate the execution if issued out of his
17 court. For the protection of the suggestee the lien of a sug-
18 gestee execution shall, as regards the suggestee, be deemed
19 unaffected by a vacating or modifying order prior to service
20 of such order upon the suggestee.

1224 Sec. 7. *Renewal of Suggestee Executions.* A suggestee ex-
2 ecution which shall expire wholly or partly unsatisfied may
3 be renewed from time to time in the manner in which it was
4 originally issued and for a like period. The renewal execu-
5 tion shall conform to the original save that it shall state in
6 addition the fact that it is a renewal and shall be issued only
7 for the balance due on the judgment. A renewal execution
8 shall retain the same priority of lien as the original if, and
9 only if, served within thirty days before the expiration of the
10 life of the original.

Sec. 8. *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 suggestee subse-
4 quent to service of the notice required by section four hereof.

Sec. 9. *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 for by
5 article eight of this chapter. The exemption may be claimed
6 for sums currently accruing but must be asserted anew as to
7 any salary or wages which shall begin to accrue after the next
8 payment date. Such exemption shall not be binding upon a
9 suggestee unless and until a certificate of exemption or true
10 copy thereof shall have been delivered to him.

Sec. 10. *Accounting for Moneys Collected Under Suggestee*
2 *Executions.* It shall be the duty of the officer to whom a sug-
3 gestee execution shall be delivered to account for and pay
4 over to the person entitled thereto all moneys collected on
5 such execution, less his lawful fees and expenses for col-
6 lecting the same. Such accounting shall be made from time

7 to time and at least once every month from the time a levy
8 shall have been made.

Sec. 11. *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
5 conformable to the provisions hereof. Forms so prescribed
6 shall be followed in the preparation of all suggestee execu-
7 tions issued under this article from and after a date to be
8 fixed by the Supreme Court of Appeals in promulgating the
9 same, which shall not be less than thirty or more than ninety
10 days after their certification as hereinafter provided. Copies
11 of forms so prescribed shall be certified by the clerk of the
12 Supreme Court of Appeals to the clerk of each court of record
13 in the state. It shall thereupon be the duty in turn of each
14 such clerk to furnish each court not of record within the cir-
15 cuit, district, or other territorial area constituting the terri-
16 torial jurisdiction of his court, by registered mail, with true
17 copies of the forms and at the same time to inform such court
18 of the time when the action of the Supreme Court of Appeals
19 in prescribing the forms shall take effect.

Sec. 12. *Fees.* The general laws governing the fees of
2 courts and court officers shall apply to the duties and func-
3 tions performed under this article. In no event, however,
4 shall the fee for modifying or vacating a suggestee execution
5 exceed one dollar.

Sec. 13. *Construction of Article.* This article is remedial
2 in purpose and shall be liberally construed to that end.

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

E. O. Wiseman

Chairman Senate Committee

Wm. B. Walter

Chairman House Committee

Originated in the

Senate

Takes effect

Ninety days for

passage

Charles Finley

Clerk of the Senate

Wm. S. Hare

Clerk of the House of Delegates

Wm. B. Walter

President of the Senate

James T. Thomas

Speaker House of Delegates

The within

approved

this the

15th

day of

March

1939.

James A. L. H.

Governor

Filed in the office of the Secretary of State
of West Virginia. **MAR 16 1939**

Wm. S. O'BRIEN,
Secretary of State