WEST VIRGINIA CODE: §21A-5-4

§21A-5-4. Required payments; failure to make required payments; criminal penalties.

(a) An employer is liable for payments in respect to wages paid for employment occurring during each year in which he or she is subject to this chapter.

(b) Any person, firm, partnership, company, corporation, or association who, as an employer, is subject to the provisions of this chapter, and who knowingly and willfully fails to make any payment or file a report as required by the provisions of this chapter within the time periods specified by law, is guilty of an offense as follows:

(1) Any employer who knowingly and willfully fails to make any payment or file a report within the time period specified by law for two calendar quarters, which quarters need not be consecutive but are within twenty-five quarters of each other, is guilty of a misdemeanor and:

(A) Upon a first conviction under this subdivision, shall be fined not less than $500 nor more than $1,000; or

(B) Upon a second conviction under this subdivision, shall be fined not less than $1,000 nor more than $5,000, imprisoned for not longer than thirty days or both fined and imprisoned.

(2) Any employer who, having been twice convicted of the offense specified in subdivision (1) of this subsection, knowingly and willfully fails to make any payment or file a report as required by the provisions of this chapter within the time period specified by law for two calendar quarters, which quarters need not be consecutive but are within twenty-five quarters of each other, is guilty of a felony and, upon conviction thereof, shall be fined not less than $5,000 nor more than $10,000, or imprisoned in the penitentiary for a definite term of imprisonment which is not less than one year nor more than two years, or both fined and imprisoned.

(3) Any employer who knowingly and willfully fails to make any payment or file a report within the time period specified by law for four calendar quarters, which quarters need not be consecutive but are within thirty six quarters of each other, is guilty of a felony and, upon conviction thereof, shall be fined not less than $5,000 nor more than $25,000, or imprisoned in the penitentiary for a definite term of imprisonment which is not less than one year nor more than two years, or both fined and imprisoned.

(c) In charging a person with a second or subsequent offense under the provisions of paragraph (B), subdivision (1), subsection (b) of this section or under subdivision (2), subsection (b) of this section, the warrant, indictment or information must set forth the date and particulars of the previous offense or offenses. No person may be convicted of a second

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or subsequent offense unless the conviction for the previous offense has become final and unless a prior offense occurred within the ten year period next preceding the second or subsequent offense. The venue for prosecution of any violation of this subsection is either the county in which the defendant's principal business operations are located or in Kanawha County where the fund is located.

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