WEST VIRGINIA CODE CHAPTER 21A ARTICLE 8

WV Legislature

§21A-8-1. Establishment.

There is hereby established as a special fund, separate and apart from all public moneys or funds of the state, an Unemployment Compensation Fund. The fund shall consist of:

(1) All payments collected under this chapter.

(2) Interest earned upon money in the fund.

(3) Property or securities acquired through the use of the fund.

(4) Earnings of such property or securities.

(5) Amounts transferred from the Employment Security Special Administration Fund.

(6) Any moneys loaned to the fund pursuant to section sixteen of this article.

(7) Any moneys received from the federal unemployment account in the Unemployment Trust Fund in accordance with Title XII of the Social Security Act, as amended.

All money in the funds shall be mingled and undivided.

Any interest required to be paid on advances under Title XII of the Social Security Act, as amended, shall be paid by the date on which such interest is due. No interest shall be paid directly or indirectly from amounts in the Unemployment Compensation Trust Fund.

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§21A-8-2. Administration.

The commissioner shall be the custodian of the fund and shall administer it exclusively for the purposes of this chapter.

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§21A-8-3. Commissioner's bond.

The commissioner shall give a separate surety bond in the sum of $50,000 for the faithful management of the fund. The bond shall be in a form prescribed by the Attorney General and approved by the Governor. The premiums upon the bond shall be paid out of the administration fund.

The bond shall be filed with the Secretary of State.

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§21A-8-4. Accounts in fund.

The commissioner shall maintain in the fund three separate accounts:

(1) A clearing account.

(2) An unemployment trust fund account.

(3) A benefit account.

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§21A-8-5. Clearing account.

Upon the receipt of payments and other moneys payable into the fund under this chapter, the commissioner shall immediately deposit them in the clearing account. Refunds payable under section nineteen, article five, of payments erroneously collected, shall be made from the clearing account. Such refunds shall be made upon warrants issued by the commissioner. Interest collected on delinquent payments shall be paid out of the clearing account, upon warrants issued by the commissioner, into the State Treasury to be credited to the employment security special administration fund.

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§21A-8-6. Unemployment trust fund account.

The unemployment trust fund account shall consist of money deposited with the secretary of the treasury of the United States to the credit of this state in the unemployment trust fund.

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§21A-8-7. Deposit with federal government.

Except as otherwise provided in section five of this article, after clearance, moneys in the clearing account shall be deposited immediately with the secretary of the treasury of the United States to the credit of the account of this state in the unemployment trust fund, established under section nine hundred four of the Social Security Act. The deposit of these funds shall not be conditioned by the requirements imposed upon public funds of this state.

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§21A-8-8. Benefit account.

The benefit account shall consist of moneys requisitioned from this state's account in the unemployment trust fund.

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§21A-8-9. Deposit of funds.

Except as otherwise provided in this article money in the clearing and benefit accounts shall be deposited by the commissioner, with the consent of the Governor, in any bank or public depository in which public funds of the state may be deposited. No public deposit insurance charge or premium shall be paid out of the unemployment compensation fund.

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§21A-8-10. Withdrawals.

Except as provided in section thirteen of this article, money shall be requisitioned from this state's account in the Unemployment Trust Fund solely for the payment of benefits and repayment of any loans outstanding from the Revenue Shortfall Reserve Fund, created in section twenty, article two, chapter eleven-b of this code, as provided in section sixteen of this article. The commissioner may requisition from the Unemployment Trust Fund such amounts, not exceeding the amount of the account, as the commissioner determines to be necessary for the payment of benefits for a reasonable future period or to repay a loan outstanding from the Revenue Shortfall Reserve Fund as provided in section sixteen of this article.

Upon receipt of the money the commissioner shall deposit it in the benefit account.

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§21A-8-11. Issuance and signing of warrants; forgery; penalty.

The commissioner shall issue his warrants for the payment of benefits solely from the benefit account. Expenditures of money in the benefit account and refunds from the clearing account shall not be subject to limitations imposed upon the release of public funds in the custody of state officers. All warrants when issued by the commissioner shall bear his signature, personally signed by him or by such employees as are, in writing, authorized by him to make his signature thereto, or bear a facsimile of the commissioner's signature. Such signature of the commissioner may be made, however, by means of such mechanical or electrical device as the commissioner may select, after the same shall have been approved by the Governor and the Attorney General; any such mechanical or electrical device, as so selected, to be safely kept in the office of the commissioner so that no one shall have access thereto except the commissioner and such of his employees, as may be authorized to sign warrants as hereinabove provided. If any person, other than the commissioner, or his employees duly and respectively authorized by him so to do, as above provided, shall sign the name of the commissioner by the use of any mechanical or electrical device, or otherwise, or use the facsimile of the signature of the commissioner on any warrant, or utter or attempt to employ as true such forged warrant, knowing the same to be forged, he shall be guilty of a felony and, upon conviction shall be confined in the penitentiary not less than two nor more than ten years.

WV Legislature

§21A-8-12. Unclaimed amounts.

Amounts unclaimed or unpaid at the expiration of the period for which sums have been requisitioned, shall be deducted from the estimates for succeeding periods, or in the discretion of the commissioner may be redeposited with the secretary of the treasury of the United States in the unemployment trust fund.

WV Legislature

§21A-8-13. Termination of state act.

In case Title IX of the Federal Social Security Act is declared unconstitutional by the supreme court of the United States or is repealed by Congress or amended with the result that no portion of the contributions required by this chapter may be credited against the federal excise tax levied by Title IX of such act, the provisions of this chapter by virtue of that fact shall become inoperative.

All assets standing to the credit of the state in the unemployment trust fund in the United States treasury shall be requisitioned promptly by the commissioner. The assets of the state's account in the trust fund shall be placed in the unemployment compensation fund and together with the assets in that fund shall be refunded pro rata to the contributors.

Money in the administration fund received from the federal government shall be dealt with by the State Treasurer pursuant to the conditions of the grant thereof to the State of West Virginia, and any assets therein which have been appropriated thereto out of the general treasury of the state by the Legislature shall revert to such general fund in the State Treasury.

Corresponding action shall be taken with respect to assets in the unemployment compensation fund, the unemployment trust fund, and the administration fund, in the event that this chapter shall be repealed by the Legislature, or declared invalid under the state Constitution by the Supreme Court of Appeals of West Virginia or invalid under the United States Constitution by the supreme court of the United States.

The commissioner is hereby granted continuing authority for the purposes of action provided for by this section in case any of the above contingencies occur.

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§21A-8-14. Transfer of funds to railroad unemployment insurance account.

Notwithstanding any requirements of the foregoing sections of this article, the commissioner shall, prior to whichever is the later of (1) thirty days after the close of this session of the Legislature and (2) July 1, 1939, authorize and direct the secretary of the treasury of the United States to transfer from this state's account in the unemployment trust fund, established and maintained pursuant to section nine hundred four of the Social Security Act, as amended, to the railroad unemployment insurance account, established and maintained pursuant to section ten of the Railroad Unemployment Insurance Act, an amount hereinafter referred to as the preliminary amount; and shall, prior to whichever is the later of (1) thirty days after the close of this session of the Legislature and (2) January 1, 1940, authorize and direct the secretary of the treasury of the United States to transfer from this state's account in said unemployment trust fund to said railroad unemployment insurance account, an additional amount, hereinafter referred to as the liquidating amount. The preliminary amount shall consist of that proportion of the balance in the unemployment compensation fund as of June 30, 1939, as the total amount of contributions collected from "employers" (as the term "employer" is defined in section one-a of the Railroad Unemployment Insurance Act) and credited to the unemployment compensation fund bears to all contributions theretofore collected under this chapter and credited to the unemployment compensation fund. The liquidating amount shall consist of the total amount of contributions collected from "employers" (as the term "employer" is defined in section one-a of the Railroad Unemployment Insurance Act) pursuant to the provisions of this chapter during the period July 1, 1939 to December 31,1939, inclusive.

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§21A-8-15. Administrative use of money credited to account of State in Unemployment Trust Fund pursuant to § 903 of Social Security Act.

Money credited to the account of this State in the Unemployment Trust Fund by the Secretary of the Treasury of the United States of America pursuant to section nine hundred three of the Social Security Act, as amended, may not be requisitioned from this State's account or used except for the payment of expenses incurred for the administration of this chapter. Such money may be requisitioned pursuant to section ten [§§ 21A-8-10 et seq.] of this article for the payment of benefits. Such money may also be requisitioned and used for the payment of expenses incurred for the administration of this chapter but only pursuant to a specific appropriation by the Legislature and only if the expenses are incurred and the money requisitioned after the enactment of an appropriation law which specifies the purposes for which such money is appropriated and the amounts appropriated therefor. Such appropriation is subject to the following conditions:

(1) The period within which such money may be obligated is limited to a period ending not more than two years after the effective date of the appropriation law; and

(2) The amount which may be obligated is limited to an amount which does not exceed the amount by which (A) the aggregate of the amounts transferred to the account of this state pursuant to section 903 of the Social Security Act exceeds, (B) the aggregate of the amounts used by this State pursuant to this chapter and charged against the amounts transferred to the account of this State.

(b) For purposes of subdivision (2) of subsection (a), amounts obligated for administrative purposes pursuant to an appropriation shall be chargeable against transferred amounts at the exact time the obligation is entered into. The appropriation, obligation, and expenditure or other disposition of money appropriated under subdivision (2) shall be accounted for in accordance with standards established by the United States Secretary of Labor.

(c) Money requisitioned for the payment of expenses of administration pursuant to this section shall be deposited in the Employment Security Administration Fund, but, until expended, shall remain a part of the Unemployment Compensation Fund. The commissioner shall maintain a separate record of the deposit, obligation, expenditure, and return of funds so deposited. If any money so deposited is, for any reason, not to be expended for the purpose for which it was appropriated, or, if it remains unexpended at the end of the period specified by the law appropriating such money, it shall be withdrawn and returned to the Secretary of the Treasury of the United States for credit to this State's account in the Unemployment Trust Fund.

WV Legislature

§21A-8-16. Loans to Unemployment Compensation Fund from Revenue Shortfall Reserve Fund.

(a) Notwithstanding any provision of this code to the contrary and subject to the provisions of this section, the Governor may, by executive order, after first notifying the presiding officers of both houses of the Legislature in writing, borrow funds from the Revenue Shortfall Reserve Fund created in section twenty, article two, chapter eleven-b of this code for deposit into the Unemployment Compensation Fund, created in section one of this article, to be expended in accordance with this code. The amount of funds borrowed and outstanding under this section may not exceed $50 million at any one time, or the amount the Governor determines is necessary to adequately sustain the balance in the Unemployment Compensation Fund at a minimum of $50 million, whichever is less.

(b) Notwithstanding the provisions of subsection (a) of this section, the Governor may not borrow funds from the Revenue Shortfall Reserve Fund unless the Executive Director of Workforce West Virginia has projected that the balance in the state's Unemployment Compensation Fund will be less than $50 million at any time during the next thirty days.

(c) Any funds borrowed pursuant to this section shall be used to pay benefits only.

(d) Any funds borrowed pursuant to this subsection shall be repaid from funds on deposit in the Unemployment Trust Fund in excess of $50 million or from other funds legally available for such purpose, without interest, and redeposited to the credit of the Revenue Shortfall Reserve Fund within one hundred eighty days of their withdrawal.

(e) No amounts may be borrowed pursuant to the provisions of this section after September 1, 2018.

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