WEST VIRGINIA CODE CHAPTER 21a ARTICLE 10

WV Legislature

§21A-10-1. Agreements to waive rights or pay employer's contribution invalid.

An agreement to waive, release or commute rights to benefits, or other rights, accruing under this chapter shall be invalid.

An agreement by an individual to pay all or any portion of an employer's payments shall be invalid.

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§21A-10-2. Assignment of benefits invalid; exemption from process; exception.

(a) An assignment, pledge or encumbrance of any benefit due or payable under this chapter is invalid. Right to benefits is exempt from levy, execution, attachment or other processes for the collection of debt. Benefits received by an individual so long as they are not mingled with other funds of the recipient, are exempt from process for the collection of a debt. The waiver of any exemption provided in this section is void.

(b) The provisions of subsection (a) of this section do not apply to:

(1) The assignment or collection of child support payments under the provisions of section sixteen, article six of this chapter;

(2) A levy by the internal revenue service authorized by 26 U.S.C. §6331 subsection (h); or

(3) Collection of debts incurred for necessaries furnished to an individual, the individual's spouse or dependents, during a period of unemployment.

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§21A-10-3. Limitation of fees.

No fee shall be charged an individual in any proceeding under this chapter by the department or its representatives.

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§21A-10-4. Records and reports; preservation; copies; admissibility; destruction.

(1) An employing unit shall keep true and accurate work records containing such information as the commissioner may prescribe. The record shall be open to inspection and be subject to being copied by the commissioner or his authorized representatives at any reasonable time.

(2) The commissioner may cause to be made such summaries, compilations, photographs, duplication, or reproduction of any records, reports, or transcripts thereof as he may deem advisable for the effective and economical preservation of information contained therein, and such summaries, compilations, photographs, duplication, or reproductions duly authenticated, shall be admissible in any proceeding under this chapter if the original record or records would have been admissible therein and are unavailable.

(3) The commissioner, with the concurrence of the majority of the advisory council, may provide regulations for the destruction or disposition, after reasonable periods, of any records, reports, transcripts, or reproductions thereof, or other papers in his custody, the preservation of which is considered no longer necessary for the establishment of contribution liability or benefit rights, or for any purpose necessary to the proper administration of this chapter, including any audit required.

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§21A-10-5. Right to representation by counsel or agent; fees.

An individual may be represented by counsel or authorized agent before the board of review, an appeal tribunal, or examiner, or a court; but the amount of the fee for such service shall be subject to the regulation of the board.

A person who charges or accepts a fee for such service in an amount unapproved by the board shall be guilty of a misdemeanor. Charging an unapproved amount shall constitute grounds for disbarment.

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§21A-10-6. Self-incrimination; perjury.

A person shall not be excused from attending and testifying or producing books, papers, correspondence, memoranda, or other records before the commissioner or the board or in obedience to the subpoena of the board or the commissioner, or a duly authorized representative of the board or the commissioner, in any proceeding brought under this chapter on the ground that the testimony or evidence may tend to incriminate him or subject him to a penalty or forfeiture. An individual shall not be prosecuted or subjected to penalty or forfeiture on account of testimony given, or evidence produced subject to such subpoena, if prior to giving such testimony or producing such evidence he has claimed his privilege against self-incrimination.

This section shall not exempt an individual from prosecution and punishment for perjury.

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§21A-10-7. False representations; penalties.

(a) A person who makes a false statement or representation knowing it to be false or who knowingly fails to disclose a material fact in order to obtain or attempt to obtain or increase a benefit, either for himself, herself or another, under this chapter, or under an employment security law of any other state or of the federal government for either of which jurisdictions this state is acting as an agent, is guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than $100 nor more than $1,000, or by confinement in jail for not longer than thirty days, or both, and by full repayment of all benefits obtained fraudulently. Each false statement or representation, or failure to disclose a material fact, is a separate offense.

(b) After July 1, 2012, a penalty of twenty percent of the amount of the erroneous payment attaches to the amount of the liability to be repaid by the benefit recipient for any payment of benefits determined to be obtained by the recipient's fraudulent statements or actions. The first seventy-five percent of the penalty collected from the benefit recipient shall be deposited in the state's Unemployment Trust Fund with the remaining twenty-five percent of the penalty collected to be deposited in a special administrative account to be used for increased integrity activities to identify and recover erroneous payments of benefits created by fraudulent activities of benefit recipients. Penalty amounts established due to fraudulent activities of benefit recipients may not be used to offset future benefits payable to benefit recipients.

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§21A-10-8. Recovery of benefits paid on misrepresentation; limitations.

A person who, by reason of nondisclosure or misrepresentation, either by himself or another (irrespective of whether such nondisclosure or misrepresentation was known or fraudulent), has received a sum as a benefit under this chapter, shall either have such sum deducted from a future benefit payable to him or shall repay to the commissioner the amount which he has received. Collection shall be made in the same manner as collection of past-due payments against employers as set forth in section sixteen of article five of this chapter, which specifically includes the institution of civil action and collection procedures thereon enumerated in said section: Provided, That such collection or deduction of benefits shall be barred after the expiration of five years, except for known or fraudulent nondisclosure or misrepresentation which shall be barred after the expiration of ten years, from the date of the filing of the claim in connection with which such nondisclosure or misrepresentation occurred.

WV Legislature

§21A-10-9. Penalty for deducting employer's contribution or requiring waiver of right.

An employer who directly or indirectly:

(1) Makes or accepts a deduction from an individual's wage for the purpose of financing an employer's payment, or

(2) Requires or accepts a waiver of a right given an individual by this chapter, shall be guilty of a misdemeanor and, upon conviction shall be fined not less than $100 nor more than $1,000.

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§21A-10-10. General penalty.

A person who wilfully violates a provision of this chapter or rule or regulation thereunder for which a specific penalty has not been imposed shall be guilty of a misdemeanor and, upon conviction shall be fined not less than $20 nor more than $200, or be imprisoned for not longer than thirty days, or both. Each day such violation continues shall be a separate offense.

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§21A-10-11. Reporting requirements and required information; use of information; libel and slander actions prohibited.

(a) Each employer, including labor organizations as defined in subsection (i) of this section, shall, quarterly, submit certified reports on or before the last day of the month next following the calendar quarter, on forms to be prescribed by the commissioner. The reports shall contain:

(1) The employer's assigned unemployment compensation registration number, the employer's name, and the address at which the employer's payroll records are maintained;

(2) Each employee's Social Security account number, name, and the gross wages paid to each employee, including any remunerations below and above the threshold wage described by §21A-1A-28 of this code;

(3) The total gross wages paid within the quarter for employment, which includes money wages and the cash value of other remuneration, including any remunerations below and above the threshold wage described by §21A-1A-28 of this code;

(4) Each employee's job title and the county in which the majority of the employee's job duties are performed; and

(5) Other information that is reasonably connected with the administration of this chapter.

(b) Information obtained may not be published or be open to public inspection to reveal the identity of the employing unit or the individual.

(c) Notwithstanding the provisions of subsection (b) of this section, the commissioner may provide information obtained to the following governmental entities for purposes consistent with state and federal laws:

(1) The United States Department of Agriculture;

(2) The state agency responsible for enforcement of the Medicaid program under Title XIX of the Social Security Act;

(3) The United States Department of Health and Human Services or any state or federal program operating and approved under Title I, Title II, Title X, Title XIV or Title XVI of the Social Security Act;

(4) Those agencies of state government responsible for economic and community development; early childhood, primary, secondary, postsecondary, and vocational education; the West Virginia P-20 longitudinal data system established pursuant to §18B-1D-10 of this code; and vocational rehabilitation, employment, and training, including, but not limited to, the administration of the Perkins Act and the Workforce Innovation and Opportunity Act;

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(5) The Tax Division, but only for the purposes of collection and enforcement;

(6) The Division of Labor for purposes of enforcing the wage bond pursuant to the provisions of §21-5-14 of this code;

(7) The contractors licensing board for the purpose of enforcing the contractors licensing provisions pursuant to §30-42-1 *et seq*. of this code;

(8) Any agency of this or any other state, or any federal agency, charged with the administration of an unemployment compensation law or the maintenance of a system of public employment offices;

(9) Any claimant for benefits or any other interested party to the extent necessary for the proper presentation or defense of a claim; and

(10) The Insurance Commissioner for purposes of its Workers Compensation regulatory duties.

(d) The agencies or organizations which receive information under subsection (c) of this section shall agree that the information shall remain confidential as not to reveal the identity of the employing unit or the individual consistent with the provisions of this chapter.

(e) The commissioner may, before furnishing any information permitted under this section, require that those who request the information shall reimburse WorkForce West Virginia for any cost associated for furnishing the information.

(f) The commissioner may refuse to provide any information requested under this section if the agency or organization making the request does not certify that it will comply with the state and federal law protecting the confidentiality of the information.

(g) A person who violates the confidentiality provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $20 nor more than $200 or confined in a county or regional jail not longer than 90 days, or both.

(h) An action for slander or libel, either criminal or civil, may not be predicated upon information furnished by any employer or any employee to the commissioner in connection with the administration of any of the provisions of this chapter.

(i) For purposes of subsection (a) of this section, the term “labor organization” means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work. It includes any entity, also known as a hiring hall, which is used by the organization and an employer to carry out requirements described in 29 U. S. C. §158(f)(3) of an agreement between the organization and the employer.

WV Legislature

§21A-10-12. Representation of state in civil actions.

The commissioner, through his attorney, may represent the interest of the state in any civil action to enforce the provisions of this chapter.

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§21A-10-13. Prosecution and jurisdiction of criminal actions.

Criminal actions to enforce the provisions of this chapter, or rules or regulations issued thereunder, shall be prosecuted by the Attorney General, or at his request by the prosecuting attorney of any county in which the defendant resides, or by an attorney of the department.

The commissioner may cause complaints to be made and proceedings to be instituted and prosecuted against any person violating any provisions of this chapter, and in all such cases no security for costs shall be required of the commissioner.

Justices of the peace shall have concurrent jurisdiction with the circuit or other criminal courts of all misdemeanors arising under this chapter.

WV Legislature

§21A-10-14. Liability of state for benefits limited to unemployment compensation fund.

Benefits under this chapter shall be due and payable only to the extent that moneys are available to the credit of the unemployment compensation fund. Neither the state nor the commissioner shall be liable for any claim in excess of the credit of the fund.

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§21A-10-15. Severability.

The provisions of this chapter shall be construed as severable, and should any provision be held unconstitutional, or for any other reason invalid, the remaining provisions shall not be affected thereby.

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§21A-10-16. Inconsistent acts repealed.

Acts or parts of acts in conflict with or superseded by the provisions of this chapter are hereby repealed.

WV Legislature

§21A-10-17. Right to amend or repeal chapter; application of certain provisions.

The Legislature reserves the right to amend or repeal all or any part of this chapter and no private rights shall vest against any legislative amendment or change or repeal. All rights, privileges, or immunities conferred by this chapter or by acts done pursuant thereto shall exist subject to the power of the Legislature to amend or repeal this chapter at any time.

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§21A-10-18. Change of federal payroll tax.

Whenever legislation enacted by the Congress of the United States providing for a federal payroll tax against which the contribution required by this chapter may be credited, is repealed, amended, interpreted, affected, or otherwise changed in such manner that no portions of the contributions required by this chapter may be thus credited, then upon the date of such change the provisions of this chapter requiring contributions and providing for payment of benefits shall cease to be operative. If thereafter such credit be allowed, the terms of this chapter shall as of the date of such allowance of credit, again become operative and collections of contributions and payment of benefits shall be resumed.

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§21A-10-19. Disclosure of information to child support agencies.

(a) The Bureau of Employment Programs shall disclose, upon request, to officers or employees of any state or local child support enforcement agency, and to employees of the federal secretary of health and human services, any wage and benefit information with respect to individuals which is contained in its records.

The term "state or local child support enforcement agency" means any agency of a state or political subdivision thereof operating pursuant to a plan described in section 453, 453a or 454 of the Social Security Act, as codified in 42 U.S.C. §§653, 653a and 654 which has been approved by the secretary of health and human services under Part D, Title IV of the Social Security Act, as codified in 42 U.S.C. §§651 through 669b.

(b) The requesting agency shall agree that the information is to be used only for the purpose of establishing and collecting child support obligations from, and locating, individuals owing the obligations which are being enforced pursuant to a plan described in section 453, 453a or 454 of the Social Security Act, as codified in 42 U.S.C. §§653, 653a and 654 respectively, which has been approved by the secretary of health and human services under Part D, Title IV of the Social Security Act, as codified in 42 U.S.C. §§651 through 669b, or as otherwise authorized in 42 U.S.C. §653 (i)(1), (i)(3) and (j).

(c) The information may not be released unless the requesting agency agrees to reimburse the costs involved for furnishing the information.

(d) In addition to the requirements of this section, all other requirements with respect to confidentiality of information obtained in the administration of this chapter and the sanctions imposed on improper disclosure shall apply to the use of the information by officers, and employees of child support enforcement agencies. A state or local child support enforcement agency may disclose to any agent of the agency that is under contract with the agency to carry out the purposes described in subsection (b) of this section, wage information that is disclosed to an officer or employee of the agency under subsection (a) of this section. Any agent of a state or local child support agency that receives wage information under this paragraph shall comply with the safeguards established to keep the information confidential and is subject to the criminal provisions of subsection (g), section eleven of this article.

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§21A-10-20. Disclosure of information to food stamp agencies.

(1) The Bureau of Employment Programs shall disclose, upon request, to officers and employees of the United States Department of Agriculture and any state food stamp agency, with respect to an identified individual, any of the following information which is contained in its records:

(a) Wage information;

(b) Whether the individual is receiving, has received, or has made application for unemployment compensation and the amount of any compensation being received or to be received by such individual;

(c) The current or most recent home address of the individual; and

(d) Whether the individual has refused an offer of employment and if so, a description of the employment offered and the terms, conditions and rate of pay therefor.

(2) The term "state food stamp agency" means any agency described in section (3) (n) (1) of the Food Stamp Act of 1977 which administers the food stamp program established under such act.

(3) The requesting agency shall agree that such information shall be used only for purposes of determining the applicant's eligibility for benefits, or the amount of benefits, under the food stamp program established under the Food Stamp Act of 1977.

(4) In addition to the requirements of this section, all other requirements with respect to confidentiality of information obtained in the administration of this chapter and the sanctions imposed for improper disclosure of information obtained in the administration of this article shall apply to the use of such information by the officers and employees of any food stamp agency or the United States Department of Agriculture.

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§21A-10-21. Recovery of benefits paid through error; limitation.

A person who, by reason of error, irrespective of the nature of said error, has received a sum as a benefit under this chapter, shall either have such sum deducted from a future benefit payable to him or shall repay to the commissioner the amount which he has received. Collection shall be made in the same manner as collection of past due payment: Provided, That such collection or deduction of benefits shall be barred after the expiration of two years.

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§21A-10-22. Disclosure of information to department of housing and urban development.

(1) The Bureau of Employment Programs shall disclose, upon request, to officers and employees of the department of housing and urban development and to representatives of public housing agencies, any wage and benefit information with respect to an identified individual which is contained in its records. The term "public housing agencies" means any agency described in section 3 (b) (6) of the United States Housing Act of 1937.

(2) The requesting agency shall agree that such information is to be used only for the purpose of determining an individual's eligibility for benefits, or the amount of benefits under any housing assistance program of the department of housing and urban development.

(3) The information shall not be released unless the requesting agency agrees to reimburse the costs involved for furnishing such information.

(4) In addition to the requirements of this section, all other requirements with respect to confidentiality of information obtained in the administration of this chapter and the sanctions imposed on improper disclosure shall apply to the use of such information by officers and employees of any public housing agency or the department of housing and urban development.

WV Legislature

§21A-10-23. Creation of Unemployment Compensation Insurance Fraud Unit; purpose; duties; and personnel qualifications.

(a) There is hereby established the West Virginia Unemployment Compensation Insurance Fraud Unit within the offices of the commissioner. The commissioner may employ full-time supervisory, legal, and investigative personnel for the unit who shall be qualified by training and experience in the areas of detection, investigation, or prosecution of fraud within and against the unemployment compensation system. The director of the unit is a full-time position and shall be appointed by the commissioner and serve at his or her will and pleasure. The director shall be a certified fraud investigator with experience in computer technology. The commissioner shall provide office space, equipment, and supplies, and shall employ and train personnel, including legal counsel, investigators, auditors, and clerical staff necessary for the unit to carry out its duties and responsibilities under this article as the commissioner determines is necessary.

(b) The unit shall:

(1) Initiate inquiries and conduct investigations when the unit has reasonable cause to believe violations of any provisions of §21A-1-1 *et seq*. of this code, West Virginia Unemployment Compensation Insurance Law are occurring, or have occurred;

(2) Review reports or complaints of alleged fraud related to the business of unemployment compensation insurance activities from federal, state, and local law-enforcement and regulatory agencies, persons engaged in the business of insurance, and the general public to determine whether the reports require further investigation;

(3) Conduct independent examinations of alleged fraudulent activity related to the business of unemployment compensation insurance and undertake independent studies to determine the extent of fraudulent insurance acts; and

(4) Perform any other duties related to the purposes of this article assigned to it by the commissioner.

(c) The unit may:

(1) Inspect, copy, or collect records and evidence;

(2) Serve subpoenas issued pursuant to §21A-2-21 of this code;

(3) Administer oaths and affirmations;

(4) Share records and evidence with federal, state, or local law-enforcement or regulatory agencies, and enter into interagency agreements. For purposes of carrying out investigations under this article, the unit shall be considered a criminal justice agency under all federal and state laws, regulations, and rules and as such shall have access to any information that is available to other criminal justice agencies concerning violations of the

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unemployment compensation insurance laws of West Virginia or related criminal laws;

(5) Make criminal referrals to the county prosecutors; and

(6) Conduct investigations outside this state. If the information the unit seeks to obtain is located outside this state, the person from whom the information is sought may make the information available to the unit to examine at the place where the information is located. The unit may designate representatives, including officials of the state in which the matter is located, to inspect the information on behalf of the unit, and may respond to similar requests from officials of other states.

(d) Specific personnel of the unit designated by the commissioner may operate vehicles owned or leased for the state displaying Class A registration plates.

(e) Notwithstanding any provision of this code to the contrary, specific personnel of the unit designated by the commissioner may carry firearms in the course of their official duties after meeting specialized qualifications established by the Governor's Committee on Crime, Delinquency, and Correction, which shall include the successful completion of handgun training provided to law-enforcement officers by the West Virginia State Police: *Provided*, That nothing in this subsection shall be construed to include any person designated by the commissioner as a law-enforcement officer as that term is defined by the provisions of §30-29-1 of this code.

(f) The unit is not subject to the provisions of §6-9A-1 *et seq*. of this code, and the investigations conducted by the unit and the materials placed in the files of the unit as a result of any investigation are exempt from public disclosure under the provisions of §29B-1-1 *et seq*. of this code.

(g) Neither the state, a political subdivision, an agency, nor an employee of the state acting in an official capacity may be held personally liable for an act of an investigator employed by the unit if the act or omission was done in good faith while the investigator was performing official duties on behalf of the unit.

WV Legislature

§21A-10-24. List of services and support available to individuals who are qualified to receive federal, federal-state, or state assistance.

(a) In conjunction with the Higher Education Policy Commission and the Bureau for Family Assistance, Workforce West Virginia must compile and maintain a list of those services available to assist and support individuals who are qualified to receive federal, federal-state, or state assistance and who want to obtain a degree, secure workforce training, or reenter the workforce. This document must be maintained on Workforce West Virginia's website, and any hard copy requested for this document must be supplied to the person requesting the information via first-class mail.

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