

WEST VIRGINIA CODE: §5-10D-11

§5-10D-11. Liability of participating public employer for delinquent retirement contributions; liability of participating public employer's successor for delinquent retirement contributions; lien for delinquent contributions; collection by suit.

- (a) A participating public employer of a public retirement system administered pursuant to this article that fails, for a period of sixty days, to pay: (i) An employee retirement contribution; (ii) an employer retirement contribution; (iii) a delinquency fee; (iv) any other fees, charges or costs related to the public retirement system; or (v) any combination of subdivisions (i) through (iv) of this subsection, is liable for the amount pursuant to this article.
- (b) If a participating public employer of a public retirement system administered pursuant to this article: (i) Sells all or substantially all of its stock or assets; (ii) merges with another entity; (iii) dissolves its business; or (iv) participates, voluntarily or involuntarily, in an event which causes its business to terminate, all unpaid employee retirement contributions, employer retirement contributions, delinquency fees and other fees, charges, or costs related to the public retirement system shall be paid within thirty days of the date of applicable event identified in subdivision (i) through (iv) of this subsection.
- (c) A transferee, successor or assignee of a participating public employer of a public retirement system administered pursuant to this article is liable for the payment of all employee retirement contributions, employer retirement contributions, delinquency fees and other fees, charges or costs related to the public retirement system, if the participating public employer does not pay those amounts as provided in subsection (b) of this section.
- (d) All amounts due to the Consolidated Public Retirement Board from a participating public employer under this article is a debt owed to the Consolidated Public Retirement Board enforceable by a lien on all assets of a participating public employer, or its transferee, successor or assignee within this state. The lien attaches to all assets of a participating public employer within this state, or all assets of its transferee, successor or assignee on the date that any amount owed to the Consolidated Public Retirement Board is due. If a participating public employer, or its transferee, successor or assignee fails to pay an amount owed to the Consolidated Public Retirement Board under this article for a period of more than sixty days, the Consolidated Public Retirement Board may enforce the lien against the participating public employer, or its transferee, successor or assignee by instituting an action in the Circuit Court of Kanawha County. In the event that the Consolidated Public Retirement Board institutes an action against a participating public employer, or its transferee, successor or assignee to enforce a lien, the Consolidated Public Retirement Board is entitled to recover the amounts identified in subsection (a) of this section and in addition to those amounts, is entitled to recover all fees and costs incurred by the Consolidated Public Retirement Board during the pendency of the action, including, without limitation, accrued interest, expert witness costs, filing fees, deposition costs and reasonable

attorney fees.

(e) If a section, subsection, subdivision, provision, clause or phrase of this article or its application to any person or circumstance is held unconstitutional or invalid, the unconstitutionality or invalidity does not affect other sections, subsections, subdivisions, provisions, clauses or phrases or applications of the article, and to this end each and every section, subsection, subdivision, provision, clause and phrase of this article are declared to be severable. The Legislature declares that it would have enacted the remaining sections, subsections, subdivisions, provisions, clauses and phrases of this article even if it had known that any sections, subsections, subdivisions, provisions, clauses and phrases of this article would be declared to be unconstitutional or invalid, and that it would have enacted this article even if it had known that its application to any person or circumstance would be held to be unconstitutional or invalid.