WEST VIRGINIA CODE: §61-3-24E

§61-3-24e. Omission to subscribe for workers' compensation insurance; failure to file a premium tax report or pay premium taxes; false testimony or statements; failure to file reports; penalties; asset forfeiture; venue.

(1) Failure to subscribe:

(A) Responsible person. Any person who individually or as owner, partner, president, other officer, or manager of a sole proprietorship, firm, partnership, company, corporation or association, who, as a person who is responsible for and who is required by specific assignment, duty or legal duty, which is either expressed or inherent in laws which require the employer's principals to be informed and to know the facts and laws affecting the business organization and to make internal policy and decisions which ensure that the individual and organization comply with the general laws and provisions of chapter twenty-three of this code, knowingly and willfully fails to subscribe for and maintain workers' compensation insurance shall be guilty of a felony and, upon conviction, shall be imprisoned in a state correctional facility not less than one nor more than ten years, or in the discretion of the court, be confined in a county or regional jail not more than one year and shall be fined not more than $2,500.

(B) Any corporation, association or partnership who, as an employer as defined in chapter twenty-three of this code, knowingly and willfully fails to subscribe for and maintain workers' compensation insurance shall be guilty of a felony and, upon conviction, shall be fined not less than $2,500 nor more than $10,000.

(2) Failure to pay:

(A) Any person who individually or as owner, partner, president, other officer or manager of a sole proprietorship, firm, partnership, company, corporation or association, who, as a responsible person as defined in this section, knowingly and willfully fails to make premium tax payments to the Workers' Compensation Fund or premiums to a private carrier as required by chapter twenty-three of this code, shall be guilty of the larceny of the premium owed and, if the amount is $1,000 or more, such person shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one nor more than ten years or, in the discretion of the court, be confined in a county or regional jail not more than one year and shall be fined not more than $2,500. If the amount is less than $1,000, such person shall be guilty of a misdemeanor and, upon conviction thereof, shall be confined in a county or regional jail for a term not to exceed one year or fined an amount not to exceed $2,500, or both, in the discretion of the court.

(B) Any corporation, association, company or partnership which, as an employer as defined in chapter twenty-three of this code, knowingly and willfully fails to make premium tax payments to the Workers' Compensation Fund or premiums to a private carrier as required

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by chapter twenty-three of this code shall be guilty of the larceny of the premium owed, and, if the amount is $1,000 or more, such corporation, association, company or partnership shall be guilty of a felony and, upon conviction thereof, shall be fined not less than $2,500 nor more than $10,000. If the amount is less than $1,000, such corporation, association, company or partnership shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined an amount not to exceed $2,500.

(C) Any person who individually or as owner, partner, president, other officer, or manager of a sole proprietorship, firm, partnership, company, corporation or association, who, as a responsible person, as defined in this section, knowingly and willfully and with fraudulent intent sells, transfers or otherwise disposes of substantially all of the employer's assets for the purpose of evading the payment of workers' compensation premium taxes to the Workers' Compensation Fund, or premiums to a private carrier as required by chapter twenty-three of this code, shall be guilty of the larceny of the premium owed and, if the amount is $1,000 or more, such person shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one nor more than ten years or, in the discretion of the court, be confined in a county or regional jail not more than one year and shall be fined not more than $2,500. If the amount is less than $1,000, such person shall be guilty of a misdemeanor and, upon conviction thereof, shall be confined in a county or regional jail for a term not to exceed one year or fined an amount not to exceed $2,500, or both, in the discretion of the court.

(D) Any corporation, association, company or partnership which, as an employer as defined in chapter twenty-three of this code, knowingly and willfully and with fraudulent intent sells, transfers or otherwise disposes of substantially all of the employer's assets for the purpose of evading the payment of workers' compensation premium taxes to the Workers' Compensation Fund, or premiums to a private carrier as required by chapter twenty-three of this code shall be guilty of the larceny of the premium owed, and, if the amount is $1,000 or more, such corporation, association, company or partnership shall be guilty of a felony and, upon conviction thereof, shall be fined not less than $2,500 nor more than $10,000. If the amount is less than $1,000, such corporation, association, company or partnership shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined an amount not to exceed $2,500.

(3) Failure to file premium tax reports:

(A) Any person who individually or as owner, partner, president, other officer, or manager of a sole proprietorship, firm, partnership, company, corporation or association, who, as a responsible person as defined in this section, knowingly and willfully fails to file a premium tax report with the Workers' Compensation Fund or a premium report to a private carrier as required by chapter twenty-three of this code, shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one nor more than ten years, or in the discretion of the court, be confined in a county or regional jail for a term not to exceed one year and shall be fined not more than $2,500.

(B) Any corporation, association, company or partnership which, as an employer as defined in chapter twenty-three of this code, knowingly and willfully fails to file a premium tax report with the Workers' Compensation Fund or a premium report to a private carrier as required by chapter twenty-three of this code, shall be guilty of a felony and, upon conviction thereof, shall be fined not less than $2,500 nor more than $10,000.

(4) Failure to file other reports:

(A) Any person, individually or as owner, partner, president or other officer, or manager of a sole proprietorship, firm, partnership, company, corporation or association who, as a responsible person as defined in this section, knowingly and willfully fails to file any report, other than a premium tax report, required by such chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall be confined in a county or regional jail for a term not to exceed one year or fined an amount not to exceed $2,500, or both, in the discretion of the court.

(B) Any corporation, association, company or partnership which, as an employer as defined in chapter twenty-three of this code, knowingly and willfully fails to file any report, other than a premium tax report, with the Workers' Compensation Fund or Insurance Commissioner as required by chapter twenty-three of this code, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined an amount not to exceed $2,500.

(5) False testimony or statements:

Any person, individually or as owner, partner, president, other officer, or manager of a sole proprietorship, firm, partnership, company, corporation or association who, as a responsible person as defined in this section, knowingly and willfully makes a false report or statement under oath, affidavit, certification or by any other means respecting any information required to be provided under chapter twenty-three of this code shall be guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility for a definite term of imprisonment which is not less than one year nor more than three years or fined not less than $1,000 nor more than $10,000, or both, in the discretion of the court. In addition to any other penalty imposed, the court shall order any defendant convicted under this section to make full restitution of all moneys paid by or due to the Workers' Compensation Fund, Insurance Commissioner or private carrier as the result of a violation of this section. The restitution ordered shall constitute a judgment against the defendant and in favor of the State of West Virginia Workers' Compensation Commission, Insurance Commissioner or private carrier.

(6) Asset forfeiture:

(A) The court, in imposing sentence on a person or entity convicted of an offense under this section, shall order the person or entity to forfeit property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission, Insurance Commissioner or private carrier of the offense. Any person or entity convicted

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under this section shall pay the costs of asset forfeiture.

(B) For purposes of subdivision (A) of this subsection, the term "payment of the costs of asset forfeiture" means:

(i) The payment of any expenses necessary to seize, detain, inventory, safeguard, maintain, advertise, sell or dispose of property under seizure, detention, forfeiture or of any other necessary expenses incident to the seizure, detention, forfeiture, or disposal of such property, including payment for:

(I) Contract services;

(II) The employment of outside contractors to operate and manage properties or provide other specialized services necessary to dispose of such properties in an effort to maximize the return from such properties; and

(III) Reimbursement of any state or local agency for any expenditures made to perform the functions described in this subparagraph;

(ii) The compromise and payment of valid liens and mortgages against property that has been forfeited, subject to the discretion of the Workers' Compensation Fund to determine the validity of any such lien or mortgage and the amount of payment to be made, and the employment of attorneys and other personnel skilled in state real estate law as necessary;

(iii) Payment authorized in connection with remission or mitigation procedures relating to property forfeited; and

(iv) The payment of state and local property taxes on forfeited real property that accrued between the date of the violation giving rise to the forfeiture and the date of the forfeiture order.

(7) Venue:

Venue for prosecution of any violation of this section shall be either the county in which the defendant's principal business operations are located or in Kanawha County where the Workers' Compensation Fund is located.

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