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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2011



ENROLLED

House Bill No. 2763

(By Delegates Boggs, Fragale and White)



Passed March 11, 2011

In Effect From Passage

HB 2763

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OFFICE OF THE CLERK
SECRETARY OF STATE

H. B. 2763

(BY DELEGATES BOGGS, FRAGALE AND WHITE)

[Passed March 11, 2011; in effect from passage.]

AN ACT to amend and reenact §21A-7-11 of the Code of West Virginia, 1931, as amended, relating to prohibiting the Executive Director of Workforce West Virginia from billing a reimbursable employer under the unemployment compensation law for overpaid amounts of benefits paid to a claimant; and in cases where the employer has been billed and paid the bill for benefits which are subsequently determined to be an overpayment, requiring the executive director to reimburse the employer for the amount of the overpayment.

Be it enacted by the Legislature of West Virginia:

That §21A-7-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 7. CLAIM PROCEDURE.

§21A-7-11. Benefits pending appeal.

1 (a) Benefits found payable by decision of a deputy,
2 appeal tribunal, the board or court shall be immediately paid
3 up to the week in which a subsequent appellate body renders
4 a decision, by order, finding that benefits were not or are not
5 payable.

6 (b) If, at any appeal stage, benefits are found to be
7 payable which were found before the appeal stage to be not
8 payable, the commissioner shall immediately reinstate the
9 payment benefits.

10 (c) If the final decision in any case determines that a
11 claimant was not lawfully entitled to benefits paid to him or
12 her pursuant to a prior decision, the amount of benefits paid
13 are considered overpaid.

14 (1) The commissioner shall recover such amount by civil
15 action or in any manner provided in this code for the
16 collection of past-due payment and shall withhold, in whole
17 or in part, as determined by the commissioner, any future
18 benefits payable to the individual and credit the amount
19 against the overpayment until it is repaid in full.

20 (2) The commissioner may not bill an employer under
21 section three-a, article five of this chapter for overpaid
22 amounts of benefits paid to a claimant. In any instance where
23 the commissioner has billed an employer, the employer has
24 paid the billed amount and the amount is determined under
25 this section to be an overpayment, the commissioner shall
26 reimburse the employer for the amount of the overpayment
27 paid by the employer from the Unemployment Compensation
28 Trust Fund, if allowed by federal law, and if not from the
29 Administrative Fund: *Provided*, That no employer shall be
30 entitled to any payment under this subdivision unless such
31 employer has filed all requested adequate separation
32 information within the required time frame.

33 (d) If the final decision in any case determines that the
34 claimant was not lawfully entitled to the benefits paid to him
35 or her pursuant to a prior order any benefits paid pursuant to
36 the prior order, are not chargeable to the employer's account.

37 (e) Whenever the commissioner finds that a claimant has
38 received back pay at his or her customary wage rate from his
39 or her employer the employee is liable to repay the benefits,
40 if any, paid to the individual for the time he or she was
41 unemployed.

42 (f) In any case in which, under this section, an employee
43 is liable to repay benefits to the commissioner, the amount is
44 collectible by civil action in the name of the commissioner.

45 (g) Whenever an employer subject to this chapter is
46 required to make a payment of back pay to an individual who
47 has received unemployment compensation benefits during the
48 same period covered by the back pay award, the employer
49 shall withhold an amount equal to the unemployment
50 compensation benefits and shall repay the amount withheld
51 to the Unemployment Compensation Trust Fund. If an
52 employer fails to comply with this section, the commissioner
53 may recover from the employer the amount of unemployment
54 compensation benefits which should have been withheld by
55 a civil action.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Michael T. Fens
Chairman, House Committee

Thad G. Blake
Chairman, Senate Committee

Originating in the House.

To take effect from passage.

Gregory M. Sawyer
Clerk of the House of Delegates

Danell Estabrook
Clerk of the Senate

R. L. Taylor
Speaker of the House of Delegates

Jeffrey J. Blum
Acting President of the Senate

The within is approved this the 24th
day of March, 2011.

Carl Ray Tomblin
Governor

PRESENTED TO THE GOVERNOR

MAR 18 2011

Time 1:10 AM