ENROLLED

House Bill 2739

BY DELEGATES HOLLEN, GRAVES, ANDERSON, AND MALCOLM

(BY REQUEST OF THE WEST VIRGINIA CONSOLIDATED PUBLIC RETIREMENT BOARD)

[Passed March 8, 2019; in effect ninety days from passage.]
WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

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[Passed March 8, 2019; in effect ninety days from passage.]
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-10D-13; and to amend and reenact §61-10-20 of said code, all relating to failure of employers to make contributions on behalf of employees to a retirement plan administered by the Consolidated Public Retirement Board; authorizing the State Auditor, county commission, or sheriff of the county in which the employer is located to withhold moneys due to an employer that is delinquent in required contributions to a retirement plan after the Consolidated Public Retirement Board has certified the delinquency; authorizing withheld moneys to be applied to the retirement system the delinquent payments would have been made to; providing for interest on delinquencies; requiring the Consolidated Public Retirement Board to provide notice to a participating employer 30 days prior to certifying a delinquency under this section; making it a criminal offense for persons who are responsible for ensuring that an entity complies with the requirements of a retirement plan administered by the Consolidated Public Retirement Board to knowingly and willfully fail to make employee or employer contributions to a retirement plan for a period of 60 days after the payment is due; and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL;
BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES,
COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 10D. CONSOLIDATED PUBLIC RETIREMENT BOARD.

§5-10D-13. Withholding state and county money to satisfy delinquencies.

(a) If any employer participating in a retirement plan administered by the Consolidated Public Retirement Board pursuant to §5-10D-1 et seq. of this code fails to make any payment due
to the retirement system for a period of 60 days after the payment is due, the participating employer is delinquent, and the delinquency shall be certified by the Consolidated Public Retirement Board to the State Auditor, the county commission of the county in which the participating employer is located, and the sheriff of the county in which the participating employer is located. If any participating employer becomes delinquent as provided in this section, the State Auditor, county commission, or sheriff is authorized and directed to withhold any money due the participating employer by the state or county until the delinquency, together with regular interest thereon, is satisfied. The money withheld by the State Auditor, county commission, or sheriff shall be paid to the applicable retirement system on behalf of the participating employer.

(b) The Consolidated Public Retirement Board shall provide notice to the participating employer 30 days prior to certifying delinquency under this section.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 10. CRIMES AGAINST PUBLIC POLICY.

§61-10-20. Failure of employers to provide certain benefits for employees.

(a) In addition to any other penalty or punishment otherwise prescribed by law, any employer who is party to an agreement to pay or provide benefits or wage supplements and who without reasonable justification willfully fails or refuses to pay the amount or amounts necessary to provide the benefits or furnish the supplements within 30 days after the payments are required to be made, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $500. When the employer is a corporation, the president, secretary, treasurer or officer exercising responsibility for the nonpayment is guilty of the offense prohibited by this section.

(b) Any person who is responsible for ensuring that an entity complies with the requirements of a retirement plan administered by the Consolidated Public Retirement Board pursuant to §5-10D-1 et seq. of this code, who knowingly and willfully fails to make employee or
employer contributions to the retirement plan for a period of 60 days after the payment is due is
guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more
than $500 or shall be confined in jail for not more than six months, or both fined and confined.

(c) Conviction of a violation of subsection (b) of this section is prima facie evidence of
official misconduct.
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The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within ........... is approved this the ........... day of ........... 2019.

Governor