

H. B. 2763

(BY DELEGATES BOGGS, FRAGALE AND WHITE)

[Introduced January 24, 2011; referred to the
Committee on Finance.]

A BILL 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 ~~in accordance therewith~~ up to the week in which a subsequent
4 appellate body renders a decision, by order, finding that
5 benefits were not or are not payable.

6 (b) If, at any appeal stage, benefits are found to be
7 payable which were found before ~~such~~ the appeal stage to be
8 not 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, ~~such~~ the amount of benefits
13 ~~so paid shall be deemed~~ 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 ~~such~~ 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.

30 (d) If the final decision in any case determines that the
31 claimant was not lawfully entitled to the benefits paid to him
32 or her pursuant to a prior order any benefits ~~so~~ paid pursuant
33 to ~~such~~ the prior order, ~~shall~~ are not be chargeable to the
34 employer's account.

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

40 (f) In any case in which, under this section, an employee
41 is liable to repay benefits to the commissioner, ~~such sum~~
42 ~~shall be~~ the amount is collectible by civil action in the name
43 of the commissioner.

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

NOTE: The purpose of this bill is to prohibit 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. The bill also provides that in cases where the employer has been billed and paid the bill for benefits which are subsequently determined to be an overpayment, the executive director must reimburse the employer for the amount of the overpayment.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.