

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2739

BY DELEGATES HOLLEN, GRAVES, ANDERSON, AND

MALCOLM

(BY REQUEST OF THE WEST VIRGINIA CONSOLIDATED

PUBLIC RETIREMENT BOARD)

[Introduced January 30, 2019; Referred
to the Committee on Pensions and Retirement then
Finance.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §5-10D-13; and to amend and reenact §61-10-20 of said code, all relating to
3 failure of employers to make contributions on behalf of employees to a retirement plan
4 administered by the Consolidated Public Retirement Board; authorizing the State Auditor,
5 county commission, or sheriff of the county in which the employer is located to withhold
6 moneys due to an employer that is delinquent in required contributions to a retirement plan
7 after the Consolidated Public Retirement Board has certified the delinquency; authorizing
8 withheld moneys to be applied to the retirement system the delinquent payments would
9 have been made to; providing for interest on delinquencies; requiring the Consolidated
10 Public Retirement Board to provide notice to a participating employer 30 days prior to
11 certifying a delinquency under this section; making it a criminal offense for persons who
12 are responsible for ensuring that an entity complies with the requirements of a retirement
13 plan administered by the Consolidated Public Retirement Board to knowingly and willfully
14 fail to make employee or employer contributions to a retirement plan for a period of 60
15 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.

1 (a) If any employer participating in a retirement plan administered by the Consolidated
2 Public Retirement Board pursuant to §5-10D-1 et seq. of this code fails to make any payment due

3 to the retirement system for a period of 60 days after the payment is due, the participating
4 employer is delinquent, and the delinquency shall be certified by the Consolidated Public
5 Retirement Board to the State Auditor, the county commission of the county in which the
6 participating employer is located, and the sheriff of the county in which the participating employer
7 is located. If any participating employer becomes delinquent as provided in this section, the State
8 Auditor, county commission, or sheriff is authorized and directed to withhold any money due the
9 participating employer by the state or county until the delinquency, together with regular interest
10 thereon, is satisfied. The money withheld by the State Auditor, county commission, or sheriff shall
11 be paid to the applicable retirement system on behalf of the participating employer.

12 (b) The Consolidated Public Retirement Board shall provide notice to the participating
13 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.

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

9 (b) Any person who is responsible for ensuring that an entity complies with the
10 requirements of a retirement plan administered by the Consolidated Public Retirement Board
11 pursuant to §5-10D-1 et seq. of this code, who knowingly and willfully fails to make employee or

12 employer contributions to the retirement plan for a period of 60 days after the payment is due is
13 guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more
14 than \$500 or shall be confined in jail for not more than six months, or both fined and confined.
15 (c) Conviction of a violation of subsection (b) of this section is prima facie evidence of
16 official misconduct.

NOTE: The purpose of this bill is to make it a criminal offense for any participating public employer of any retirement system administered by the Consolidated Public Retirement Board to fail to make required contributions, and authorizes the State Auditor, county commission and sheriff to withhold any money due the participating public employer by the state or county and to remit the moneys to the applicable retirement system.

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