WEST virginia legislature

2022 regular session

Introduced

**FISCAL NOTE**

Senate Bill 251

By Senator Roberts

[Introduced January 13, 2022; referred to the   
Committee on the Judiciary; and then to the Committee on Finance]

A BILL to amend and reenact §21A-10-4 of the Code of West Virginia, 1931, as amended, relating to unemployment compensation records and reports; providing for the preservation of such records and reports; providing for the making of copies of reports and records, as well as their admissibility; dealing with their destruction and the appropriateness for doing so; and providing for a civil or criminal penalty for noncompliance.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. GENERAL PROVISIONS.

§21A-10-4. Records and reports; preservation; copies; admissibility; destruction; penalty.

~~(1) An employing unit shall keep true and accurate work records containing such information as the commissioner may prescribe. The record shall be open to inspection and be subject to being copied by the commissioner or his authorized representatives at any reasonable time.~~

~~(2) The commissioner may cause to be made such summaries, compilations, photographs, duplication, or reproduction of any records, reports, or transcripts thereof as he may deem advisable for the effective and economical preservation of information contained therein, and such summaries, compilations, photographs, duplication, or reproductions duly authenticated, shall be admissible in any proceeding under this chapter if the original record or records would have been admissible therein and are unavailable.~~

~~(3) The commissioner, with the concurrence of the majority of the advisory council, may provide regulations for the destruction or disposition, after reasonable periods, of any records, reports, transcripts, or reproductions thereof, or other papers in his custody, the preservation of which is considered no longer necessary for the establishment of contribution liability or benefit rights, or for any purpose necessary to the proper administration of this chapter, including any audit required~~

(a) Each employing unit shall keep true and accurate records containing such information as the commissioner may prescribe. Such records shall be open to inspection and be subject to being copied by the commissioner or his authorized representatives at any time and as often as may be necessary. In addition to information prescribed by the commissioner, each employer shall keep records of and report to the commissioner quarterly the street address of each establishment, branch, outlet, or office of such employer, the nature of the operation, the number of persons employed, and the wages paid at each establishment, branch, outlet, or office.

(b) The commissioner or his or her authorized representative may require from any employing unit any sworn or unsworn reports deemed necessary for the effective administration of this chapter. Any member of the board of review and any appeal referee may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which are deemed necessary for the effective administration of this chapter.

(c)(1) If, in response to the commissioner’s request, an employer refuses to allow an audit of its records; fails to make all necessary records available for audit or inspection; or in response to a fraud investigation, fails to provide a claimant’s weekly wage information; the employer may be assessed an administrative penalty of not less than $100 and not more than $2,500.

(2) Any notice requesting records as provided for in paragraph (1) of this subsection must clearly state that a penalty of up to $2,500 may be assessed for the failure to provide the records which are requested by the commissioner.

(3) Any penalties assessed and collected against the employer shall be credited to the penalty and interest account.

(4) Upon the conclusion of an audit pursuant to this subsection, the commissioner may refund the administrative penalty to the employer, minus all administrative costs associated with the audit request.

(d)(1) Information, statements, transcriptions of proceedings, transcriptions of recordings, electronic recordings, letters, memoranda, and other documents and reports thus obtained, or obtained from any individual, claimant, employing unit, or employer pursuant to the administration of this chapter, except to the extent necessary for the proper administration and enforcement of this chapter, shall be held confidential and shall not be subject to subpoena in any civil action or proceeding, nor be published or open to public inspection, other than to public employees in the performance of their public duties, including the office of workers’ compensation in any manner revealing the individual’s or employing unit's identity. However, if requested, an employing unit or employer shall receive with any “notice to appear for a hearing” a copy of the statement which the claimant made regarding his separation from that employing unit or employer and in the same manner, and on the same subject, the claimant shall receive a copy of the employer’s statement.  Additionally, any claimant or his or her duly authorized representative, at a hearing before an appeal referee or the board of review, shall be supplied with information from such records to the extent necessary for the proper presentation of his or her claim.

(2) Any person who violates any provision of this section shall be fined not less than $20 nor more than $500 or imprisoned for not less than 10 days nor more than 90 days, or both.

(e) On orders of the commissioner, any records or documents received or maintained by him or her under the provisions of this chapter, or the rules and regulations promulgated thereunder, may be destroyed under such safeguards as will protect their confidential nature two years after the date on which such records or documents last serve any useful, legal, or administrative purpose in the administration of this chapter or in the protection of the rights of anyone.

(f) Any such information, as provided in subsection (d) of this section, that is released to any public employee in the performance of public duties, may be released on a reimbursable basis and shall be used exclusively for execution of intended public duties and shall not, under any circumstance, be accessed and used for any other purpose, subject to sanction of any such public employee under paragraph (d)(2) of this section. The commissioner and the office of WorkForce West Virginia shall not be liable for any violation by any such public employee to whom such information has been disclosed or delegated.

(g) A state or local child support enforcement agency may provide access to disclosed information to any agent that is under written contract with such agency for purposes of establishing and collecting child support obligations from and locating individuals owing such obligations. Any such designated agent of a state or local child support agency that receives such information shall fully comply with the safeguards established under subsection (f) of this section, subject to sanction under paragraph (d)(2) of this section.

(h)(1) WorkForce West Virginia, the Division of Administration, or any contractor working on behalf of either of them, may be provided employment data obtained pursuant to the administration of this chapter for any one of the expressly stated following purposes:

(A) Compiling statistics which would support performance management and evaluation by program managers of state and federal programs, especially as they relate to employment outcomes.

(B) Compiling statistics which would assist in the preparation of common performance reports across agencies.

(C) Compiling statistics for education and training research purposes, including longitudinal studies to assist in program improvement and design.

(2) Any employment data, provided pursuant to this subsection, will be confidential.  No public employee or contractor acting on behalf of a state agency or employee of such contractor may do either of the following:

(A) Use any data, provided pursuant to this subsection, for any purpose other than the statistical purposes for which the data is furnished.

(B) Make public any of the data, provided pursuant to this subsection, which would allow the identity of any individual or employing unit to be inferred by either direct or indirect means.

(3)(A) Any such data, as provided in this subsection, that is released to any state agency or any contractor acting on behalf of a state agency pursuant to this subsection, may be released on a reimbursable basis and shall be used exclusively for execution of intended public duties.  Such data shall not, under any circumstance, be accessed and used for any other purpose, subject to sanction as provided for in subparagraph (C) of this paragraph of any such employee of such state agency or any contractor acting on behalf of such state agency.  The commissioner and the office of WorkForce West Virginia shall not be liable for any violation by any employee of WorkForce West Virginia, the Division of Administration, or any contractor working on behalf of either of them, to whom such information has been disclosed or delegated in accordance with the provisions of this subsection.

(B) Any such data, as provided in this subsection, that is received by any state agency or any contractor acting on behalf of a state agency pursuant to this subsection, must be destroyed within 30 days of completion of its intended purpose as described in this subsection.

(C) Any person who violates any provision of this subsection shall be fined not less than $1,000 nor more than $20,000 or imprisoned for not less than 30 days nor more than six months, or both.

NOTE: The purpose of this bill is to update the process of keeping and maintaining unemployment compensation records and reports. The bill provides for the preservation, copies, admissibility, and destruction of such records and reports. The bill provides for a civil and/or criminal penalty for noncompliance.

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