

1 **ENROLLED**2 **H. B. 2763**3  
4 (By Delegates Boggs, Fragale and White)5 [Passed March 11, 2011; in effect from passage.]  
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10 AN ACT to amend and reenact §21A-7-11 of the Code of West Virginia,  
11 1931, as amended, relating to prohibiting the Executive  
12 Director of Workforce West Virginia from billing a  
13 reimbursable employer under the unemployment compensation law  
14 for overpaid amounts of benefits paid to a claimant; and in  
15 cases where the employer has been billed and paid the bill for  
16 benefits which are subsequently determined to be an  
17 overpayment, requiring the executive director to reimburse  
18 the employer for the amount of the overpayment.

19 *Be it enacted by the Legislature of West Virginia:*

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

22 **ARTICLE 7. CLAIM PROCEDURE.**

23 **§21A-7-11. Benefits pending appeal.**

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

1 (b) If, at any appeal stage, benefits are found to be payable  
2 which were found before the appeal stage to be not payable, the  
3 commissioner shall immediately reinstate the payment benefits.

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

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

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

26 (d) If the final decision in any case determines that the  
27 claimant was not lawfully entitled to the benefits paid to him or

1 her pursuant to a prior order any benefits paid pursuant to the  
2 prior order, are not chargeable to the employer's account.

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

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

10 (g) Whenever an employer subject to this chapter is required  
11 to make a payment of back pay to an individual who has received  
12 unemployment compensation benefits during the same period covered  
13 by the back pay award, the employer shall withhold an amount equal  
14 to the unemployment compensation benefits and shall repay the  
15 amount withheld to the Unemployment Compensation Trust Fund. If an  
16 employer fails to comply with this section, the commissioner may  
17 recover from the employer the amount of unemployment compensation  
18 benefits which should have been withheld by a civil action.