

H. B. 2763

(By Delegates Boggs, Fragale and White)
[Introduced January 24, 2011; referred to the
Committee on Finance.]

**FISCAL
NOTE**

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.

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

1 or are not payable.

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

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

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

15 **(2)** The commissioner may not bill an employer under section
16 three-a, article five of this chapter for overpaid amounts of
17 benefits paid to a claimant. In any instance where the
18 commissioner has billed an employer, the employer has paid the
19 billed amount and the amount is determined under this section to be
20 an overpayment, the commissioner shall reimburse the employer for
21 the amount of the overpayment paid by the employer from the
22 Unemployment Compensation Trust Fund, if allowed by federal law,
23 and if not from the Administrative Fund.

24 **(d)** If the final decision in any case determines that the
25 claimant was not lawfully entitled to the benefits paid to him or
26 her pursuant to a prior order any benefits ~~so~~ paid pursuant to ~~such~~
27 the prior order, ~~shall~~ are not ~~be~~ chargeable to the employer's

1 account.

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

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

11 ~~(b)~~ (g) Whenever an employer subject to this chapter is
12 required to make a payment of back pay to an individual who has
13 received unemployment compensation benefits during the same period
14 covered by the back pay award, the employer shall withhold an
15 amount equal to the unemployment compensation benefits and shall
16 repay the amount withheld to the Unemployment Compensation Trust
17 Fund. If an employer fails to comply with this section, the
18 commissioner ~~shall have the right to~~ may recover from the employer
19 the amount of unemployment compensation benefits which should have
20 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.