

# H. B. 2763

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(BY DELEGATES BOGGS, FRAGALE AND WHITE)

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[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.